

to such limitations as are specifically applicable to that account. Balances of appropriations credited to an account under paragraph (1)(B) are subject only to such limitations as are applicable to the appropriations from which they are transferred.

(b) Personnel

(1) With respect to any function, power, or duty or activity of the Department of Energy that is transferred to the Administration, those employees of the element of the Department of Energy from which the transfer is made that the Secretary of Energy determines are needed to perform that function, power, or duty, or for that activity, as the case may be, shall be transferred to the Administration.

(2) The authorized strength in civilian employees of any element of the Department of Energy from which employees are transferred under this section is reduced by the number of employees so transferred.

(Pub. L. 106-65, div. C, title XXXII, § 3292, Oct. 5, 1999, 113 Stat. 969.)

§ 2483. Transition provisions

(a) Compliance with financial principles

(1) The Under Secretary of Energy for Nuclear Security shall ensure that the compliance with sound financial and fiscal management principles specified in section 2452 of this title is achieved not later than October 1, 2000.

(2) In carrying out paragraph (1), the Under Secretary of Energy for Nuclear Security shall conduct a review and develop a plan to bring applicable activities of the Administration into full compliance with those principles not later than such date.

(3) Not later than January 1, 2000, the Under Secretary of Energy for Nuclear Security shall submit to the Committees on Armed Services of the Senate and the House of Representatives a report containing the results of that review and a description of that plan.

(b) Initial report for future-years nuclear security program

The first report under section 2453 of this title shall be submitted in conjunction with the budget submitted for fiscal year 2001.

(c) Procedures for computer access

The regulations to implement the procedures under section 2425 of this title shall be prescribed not later than 90 days after the effective date of this chapter.

(d) Compliance with FAR

(1) The Under Secretary of Energy for Nuclear Security shall ensure that the compliance with the Federal Acquisition Regulation specified in section 2462 of this title is achieved not later than October 1, 2000.

(2) In carrying out paragraph (1), the Under Secretary of Energy for Nuclear Security shall conduct a review and develop a plan to bring applicable activities of the Administration into full compliance with the Federal Acquisition Regulation not later than such date.

(3) Not later than January 1, 2000, the Under Secretary of Energy for Nuclear Security shall

submit to the Committees on Armed Services of the Senate and the House of Representatives a report containing the results of that review and a description of that plan.

(Pub. L. 106-65, div. C, title XXXII, § 3295, Oct. 5, 1999, 113 Stat. 970.)

REFERENCES IN TEXT

For effective date of this chapter, referred to in subsec. (c), see section 3299 of Pub. L. 106-65, set out as an Effective Date note under section 2401 of this title.

§ 2484. Applicability of preexisting laws and regulations

Unless otherwise provided in this chapter, all provisions of law and regulations in effect immediately before the effective date of this chapter that are applicable to functions of the Department of Energy specified in section 2481 of this title shall continue to apply to the corresponding functions of the Administration.

(Pub. L. 106-65, div. C, title XXXII, § 3296, Oct. 5, 1999, 113 Stat. 971.)

REFERENCES IN TEXT

This chapter, referred to in text, was in the original “this title”, meaning title XXXII of div. C of Pub. L. 106-65, Oct. 5, 1999, 113 Stat. 953, as amended, which is classified principally to this chapter. For effective date of this chapter, see section 3299 of Pub. L. 106-65, set out as an Effective Date note under section 2401 of this title. For complete classification of title XXXII to the Code, see Short Title note set out under section 2401 of this title and Tables.

CHAPTER 42—ATOMIC ENERGY DEFENSE PROVISIONS

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2513.	Restriction on licensing requirement for certain defense activities and facilities.

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2635. Continuation of processing, treatment, and disposition of legacy nuclear materials.

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2637. Continuation of processing, treatment, and disposal of legacy nuclear materials.

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§ 2501. Definition

In this chapter, the term “congressional defense committees” means—

(1) the Committee on Armed Services and the Committee on Appropriations of the Senate; and

(2) the Committee on Armed Services and the Committee on Appropriations of the House of Representatives.

(Pub. L. 107–314, div. D, § 4002, as added Pub. L. 108–136, div. C, title XXXI, § 3141(c)(2), Nov. 24, 2003, 117 Stat. 1756.)

SHORT TITLE

Pub. L. 107–314, div. D, § 4001(a), formerly div. C, title XXXVI, § 3601, Dec. 2, 2002, 116 Stat. 2756, renumbered div. D, § 4001, and amended by Pub. L. 108–136, div. C, title XXXI, § 3141(c)(1)(A)–(D)(ii), Nov. 24, 2003, 117 Stat. 1753, provided that: “This division [enacting this chapter] may be cited as the ‘Atomic Energy Defense Act’.”

TRANSFER AND CONSOLIDATION OF RECURRING AND GENERAL PROVISIONS ON DEPARTMENT OF ENERGY NATIONAL SECURITY PROGRAMS

Pub. L. 108–136, div. C, title XXXI, § 3141(a), Nov. 24, 2003, 117 Stat. 1752, provided that:

“(1) IN GENERAL.—The purpose of this section [see Tables for classification] is to assemble together, without substantive amendment but with technical and conforming amendments of a non-substantive nature, recurring and general provisions of law on Department of Energy national security programs that remain in force in order to consolidate and organize such provisions of law into a single Act intended to comprise general provisions of law on such programs.

“(2) CONSTRUCTION OF TRANSFERS.—The transfer of a provision of law by this section shall not be construed as amending, altering, or otherwise modifying the substantive effect of such provision.

“(3) TREATMENT OF SATISFIED REQUIREMENTS.—Any requirement in a provision of law transferred under this section (including a requirement that an amendment to law be executed) that has been fully satisfied in accordance with the terms of such provision of law as of the date of transfer under this section shall be treated as so fully satisfied, and shall not be treated as being revived solely by reason of transfer under this section.

“(4) CLASSIFICATION.—The provisions of the Atomic Energy Defense Act [Pub. L. 107–314, div. D, 50 U.S.C. 2501 et seq.], as amended by this section, shall be classified to the United States Code as a new chapter of title 50, United States Code.”

SUBCHAPTER I—ORGANIZATIONAL MATTERS

§ 2511. Naval Nuclear Propulsion Program

The provisions of Executive Order Numbered 12344, dated February 1, 1982, pertaining to the Naval Nuclear Propulsion Program, shall remain in force until changed by law.

(Pub. L. 107–314, div. D, title XLI, § 4101, formerly Pub. L. 98–525, title XVI, § 1634, Oct. 19, 1984, 98 Stat. 2649; renumbered Pub. L. 107–314, div. D, title XLI, § 4101, and amended Pub. L. 108–136, div. C, title XXXI, § 3141(d)(2), Nov. 24, 2003, 117 Stat. 1757.)

REFERENCES IN TEXT

Executive Order Numbered 12344, referred to in text, is set out as a note below.

CODIFICATION

Section was formerly set out as a note under section 7158 of Title 42, The Public Health and Welfare, prior to renumbering by Pub. L. 108–136.

TRANSFER OF FUNCTIONS

All national security functions and activities performed immediately before Oct. 5, 1999, by the Office of Naval Reactors transferred to the Administrator for Nuclear Security of the National Nuclear Security Administration of the Department of Energy, and the Deputy Administrator for Naval Reactors of the Administration to be assigned the responsibilities, authorities, and accountability for all functions of the Office of Naval Reactors under Executive Order No. 12344, set out below, see sections 2406 and 2481 of this title.

EXECUTIVE ORDER NO. 12344 TO REMAIN IN FORCE

Except as otherwise specified in section 2406 of this title and notwithstanding any other provision of title XXXII of Pub. L. 106-65 (see Short Title note set out under section 2401 of this title), the provisions of Executive Order No. 12344 (set out below) to remain in full force and effect until changed by law, see section 2406 of this title.

EX. ORD. NO. 12344. NAVAL NUCLEAR PROPULSION PROGRAM

Ex. Ord. No. 12344, Feb. 1, 1982, 47 F.R. 4979, provided:

By the authority vested in me as President and as Commander in Chief of the Armed Forces of the United States of America, with recognition of the crucial importance to national security of the Naval Nuclear Propulsion Program, and for the purpose of preserving the basic structure, policies, and practices developed for this Program in the past and assuring that the Program will continue to function with excellence, it is hereby ordered as follows:

SECTION 1. The Naval Nuclear Propulsion Program is an integrated program carried out by two organizational units, one in the Department of Energy and the other in the Department of the Navy.

SEC. 2. Both organizational units shall be headed by the same individual so that the activities of each may continue in practice under common management. This individual shall direct the Naval Nuclear Propulsion Program in both departments. The director shall be qualified by reason of technical background and experience in naval nuclear propulsion. The director may be either a civilian or an officer of the United States Navy, active or retired.

SEC. 3. The Secretary of the Navy (through the Secretary of Defense) and the Secretary of Energy shall obtain the approval of the President to appoint the director of the Naval Nuclear Propulsion Program for their respective Departments. The director shall be appointed to serve a term of eight years, except that the Secretary of Energy and the Secretary of the Navy may, with mutual concurrence, terminate or extend the term of the respective appointments.

SEC. 4. An officer of the United States Navy appointed as director shall be nominated for the grade of Admiral. A civilian serving as director shall be compensated at a rate to be specified at the time of appointment.

SEC. 5. Within the Department of Energy, the Secretary of Energy shall assign to the director the responsibility of performing the functions of the Division of Naval Reactors transferred to the Department of Energy by Section 309(a) of the Department of Energy Organization Act (42 U.S.C. 7158), including assigned civilian power reactor programs, and any naval nuclear propulsion functions of the Department of Energy, including:

(a) direct supervision over the Bettis and Knolls Atomic Power Laboratories, the Expanded Core Facility and naval reactor prototype plants;

(b) research, development, design, acquisition, specification, construction, inspection, installation, certification, testing, overhaul, refueling, operating practices and procedures, maintenance, supply support, and ultimate disposition, of naval nuclear propulsion plants, including components thereof, and any special maintenance and service facilities related thereto;

(c) the safety of reactors and associated naval [naval] nuclear propulsion plants, and control of radiation and radioactivity associated with naval nuclear propulsion activities, including prescribing and enforcing standards and regulations for these areas as they affect the environment and the safety and health of workers, operators, and the general public;

(d) training, including training conducted at the naval prototype reactors of the Department of Energy, and assistance and concurrence in the selection, training, qualification, and assignment of personnel reporting to the director and of personnel who supervise, operate, or maintain naval nuclear propulsion plants; and

(e) administration of the Naval Nuclear Propulsion Program, including oversight of program support in areas such as security, nuclear safeguards and transportation, public information, procurement, logistics and fiscal management.

SEC. 6. Within the Department of Energy, the director shall report to the Secretary of Energy, through the Assistant Secretary assigned nuclear energy functions and shall serve as a Deputy Assistant Secretary. The director shall have direct access to the Secretary of Energy and other senior officials in the Department of Energy concerning naval nuclear propulsion matters, and to all other personnel who supervise, operate or maintain naval nuclear propulsion plants and support facilities for the Department of Energy.

SEC. 7. Within the Department of the Navy, the Secretary of the Navy shall assign to the director responsibility to supervise all technical aspects of the Navy's nuclear propulsion work, including:

(a) research, development, design, procurement, specification, construction, inspection, installation, certification, testing, overhaul, refueling, operating practices and procedures, maintenance, supply support, and ultimate disposition, of naval nuclear propulsion plants, including components thereof, and any special maintenance and service facilities related thereto; and

(b) training programs, including Nuclear Power Schools of the Navy, and assistance and concurrence in the selection, training, qualification, and assignment of personnel reporting to the director and of Government personnel who supervise, operate, or maintain naval nuclear propulsion plants.

SEC. 8. Within the Department of the Navy, the Secretary of the Navy shall assign to the director responsibility within the Navy for:

(a) the safety of reactors and associated naval nuclear propulsion plants, and control of radiation and radioactivity associated with naval nuclear propulsion activities, including prescribing and enforcing standards and regulations for these areas as they affect the environment and the safety and health of workers, operators, and the general public.

(b) administration of the Naval Nuclear Propulsion Program, including oversight of program support in areas such as security, nuclear safeguards and transportation, public information, procurement, logistics, and fiscal management.

SEC. 9. In addition to any other organizational assignments within the Department of the Navy, the director shall report directly to the Chief of Naval Operations. The director shall have direct access to the Secretary of the Navy and other senior officials in the Department of the Navy concerning naval nuclear propulsion matters, and to all other Government personnel who supervise, operate, or maintain naval nuclear propulsion plants and support facilities.

SEC. 10. This Order is effective on February 1, 1982.

RONALD REAGAN.

§ 2512. Reorganization of field activities and management of national security functions

(a) Limitation on delegation of authority

(1) The Secretary of Energy, in carrying out national security programs, may delegate specific management and planning authority over

matters relating to site operation of the facilities and laboratories covered by this section only to the Assistant Secretary of Energy for Defense Programs. Such Assistant Secretary may redelegate such authority only to managers of area offices of the Department of Energy located at such facilities and laboratories.

(2) Nothing in this section may be construed as affecting the delegation by the Secretary of Energy of authority relating to reporting, management, and oversight of matters relating to the Department of Energy generally, or safety, environment, and health at such facilities and laboratories.

(b) Requirement to consult with area offices

The Assistant Secretary of Energy for Defense Programs, in exercising any delegated authority to oversee management of matters relating to site operation of a facility or laboratory, shall exercise such authority only after direct consultation with the manager of the area office of the Department of Energy located at the facility or laboratory.

(c) Requirement for direct communication from area offices

The Secretary of Energy, acting through the Assistant Secretary of Energy for Defense Programs, shall require the head of each area office of the Department of Energy located at each facility and laboratory covered by this section to report on matters relating to site operation other than those matters set forth in subsection (a)(2) directly to the Assistant Secretary of Energy for Defense Programs, without obtaining the approval or concurrence of any other official within the Department of Energy.

(d) Defense programs reorganization plan and report

(1) The Secretary of Energy shall develop a plan to reorganize the field activities and management of the national security functions of the Department of Energy.

(2) Not later than January 21, 1997, the Secretary shall submit to Congress a report on the plan developed under paragraph (1). The report shall specifically identify all significant functions performed by the operations offices relating to any of the facilities and laboratories covered by this section and which of those functions could be performed—

(A) by the area offices of the Department of Energy located at the facilities and laboratories covered by this section; or

(B) by the Assistant Secretary of Energy for Defense Programs.

(3) The report also shall address and make recommendations with respect to other internal streamlining and reorganization initiatives that the Department could pursue with respect to military or national security programs.

(e) Defense Programs Management Council

The Secretary of Energy shall establish a council to be known as the “Defense Programs Management Council”. The Council shall advise the Secretary on policy matters, operational concerns, strategic planning, and development of priorities relating to the national security functions of the Department of Energy. The

Council shall be composed of the directors of the facilities and laboratories covered by this section and shall report directly to the Assistant Secretary of Energy for Defense Programs.

(f) Covered site operations

For purposes of this section, matters relating to site operation of a facility or laboratory include matters relating to personnel, budget, and procurement in national security programs.

(g) Covered facilities and laboratories

This section applies to the following facilities and laboratories of the Department of Energy:

(1) The Kansas City Plant, Kansas City, Missouri.

(2) The Pantex Plant, Amarillo, Texas.

(3) The Y-12 Plant, Oak Ridge, Tennessee.

(4) The Savannah River Site, Aiken, South Carolina.

(5) Los Alamos National Laboratory, Los Alamos, New Mexico.

(6) Sandia National Laboratories, Albuquerque, New Mexico.

(7) Lawrence Livermore National Laboratory, Livermore, California.

(8) The Nevada Test Site, Nevada.

(Pub. L. 107-314, div. D, title XLI, § 4102, formerly Pub. L. 104-201, div. C, title XXXI, § 3140, Sept. 23, 1996, 110 Stat. 2833; renumbered Pub. L. 107-314, div. D, title XLI, § 4102, and amended Pub. L. 108-136, div. C, title XXXI, § 3141(d)(3), Nov. 24, 2003, 117 Stat. 1757.)

CODIFICATION

Section was formerly set out as a note under section 7252 of Title 42, The Public Health and Welfare, prior to renumbering by Pub. L. 108-136.

AMENDMENTS

2003—Subsec. (d)(2). Pub. L. 108-136, § 3141(d)(3)(D), substituted “January 21, 1997,” for “120 days after the date of the enactment of this Act.”

TRANSFER OF FUNCTIONS

All national security functions and activities performed immediately before Oct. 5, 1999, by covered facilities listed in subsec. (g) of this section transferred to the Administrator for Nuclear Security of the National Nuclear Security Administration of the Department of Energy, see section 2481 of this title.

§ 2513. Restriction on licensing requirement for certain defense activities and facilities

None of the funds authorized to be appropriated by the Department of Energy National Security and Military Applications of Nuclear Energy Authorization Act of 1981 (Public Law 96-540) or any other Act may be used for any purpose related to licensing of any defense activity or facility of the Department of Energy by the Nuclear Regulatory Commission.

(Pub. L. 107-314, div. D, title XLI, § 4103, formerly Pub. L. 96-540, title II, § 210, Dec. 17, 1980, 94 Stat. 3202; renumbered Pub. L. 107-314, div. D, title XLI, § 4103, and amended Pub. L. 108-136, div. C, title XXXI, § 3141(d)(4), Nov. 24, 2003, 117 Stat. 1757.)

REFERENCES IN TEXT

The Department of Energy National Security and Military Applications of Nuclear Energy Authorization

Act of 1981, referred to in text, is Pub. L. 96-540, Dec. 17, 1980, 94 Stat. 3197, which enacted this section and section 2762 of this title. For complete classification of this Act to the Code, see Tables.

CODIFICATION

Section was formerly classified to section 7272 of Title 42, The Public Health and Welfare, prior to renumbering by Pub. L. 108-136.

PRIOR PROVISIONS

Provisions similar to those in this section were contained in the following appropriations act:

Pub. L. 96-164, title II, §210, Dec. 29, 1979, 93 Stat. 1264.

AMENDMENTS

2003—Pub. L. 108-136, §3131(d)(4)(C)(iii), substituted “the Department of Energy National Security and Military Applications of Nuclear Energy Authorization Act of 1981 (Public Law 96-540) or any other Act” for “this or any other Act”.

TRANSFER OF FUNCTIONS

For transfer of certain functions from Nuclear Regulatory Commission to Chairman thereof, see Reorg. Plan No. 1 of 1980, 45 F.R. 40561, 94 Stat. 3585, set out as a note under section 5841 of Title 42, The Public Health and Welfare.

SUBCHAPTER II—NUCLEAR WEAPONS STOCKPILE MATTERS

PART A—STOCKPILE STEWARDSHIP AND WEAPONS PRODUCTION

§ 2521. Stockpile stewardship program

(a) Establishment

The Secretary of Energy shall establish a stewardship program to ensure the preservation of the core intellectual and technical competencies of the United States in nuclear weapons, including weapons design, system integration, manufacturing, security, use control, reliability assessment, and certification.

(b) Program elements

The program shall include the following:

(1) An increased level of effort for advanced computational capabilities to enhance the simulation and modeling capabilities of the United States with respect to the detonation of nuclear weapons.

(2) An increased level of effort for above-ground experimental programs, such as hydrotesting, high-energy lasers, inertial confinement fusion, plasma physics, and materials research.

(3) Support for new facilities construction projects that contribute to the experimental capabilities of the United States, such as an advanced hydrodynamics facility, the National Ignition Facility, and other facilities for above-ground experiments to assess nuclear weapons effects.

(c) Authorization of appropriations

Of funds authorized to be appropriated to the Secretary of Energy for fiscal year 1994 for weapons activities, \$157,400,000 shall be available for the stewardship program established under subsection (a).

(Pub. L. 107-314, div. D, title XLII, §4201, formerly Pub. L. 103-160, div. C, title XXXI, §3138,

Nov. 30, 1993, 107 Stat. 1946; Pub. L. 105-85, div. C, title XXXI, §3152(e), Nov. 18, 1997, 111 Stat. 2042; renumbered Pub. L. 107-314, div. D, title XLII, §4201, by Pub. L. 108-136, div. C, title XXXI, §3141(e)(2), Nov. 24, 2003, 117 Stat. 1758.)

CODIFICATION

Section was formerly set out as a note under section 2121 of Title 42, The Public Health and Welfare, prior to renumbering by Pub. L. 108-136.

AMENDMENTS

1997—Subsec. (d). Pub. L. 105-85, which directed amendment of this section by striking out subsecs. (d) and (e), redesignating subsecs. (f) to (h) as (d) to (f), respectively, and striking out “and the 60-day period referred to in subsection (e)(2)(A)(ii)” in subsec. (e), as so redesignated, was executed by striking out subsec. (d) which directed President to report to Congress, because this section did not contain subsecs. (e) to (g).

§ 2522. Report on stockpile stewardship criteria

(a) Requirement for criteria

The Secretary of Energy shall develop clear and specific criteria for judging whether the science-based tools being used by the Department of Energy for determining the safety and reliability of the nuclear weapons stockpile are performing in a manner that will provide an adequate degree of certainty that the stockpile is safe and reliable.

(b) Coordination with Secretary of Defense

The Secretary of Energy, in developing the criteria required by subsection (a), shall coordinate with the Secretary of Defense.

(c) Report

Not later than March 1, 2000, the Secretary of Energy shall submit to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives a report on the efforts by the Department of Energy to develop the criteria required by subsection (a). The report shall include—

(1) a description of the information needed to determine that the nuclear weapons stockpile is safe and reliable and the relationship of the science-based tools to the collection of that information; and

(2) a description of the criteria required by subsection (a) to the extent they have been developed as of the date of the submission of the report.

(Pub. L. 107-314, div. D, title XLII, §4202, formerly Pub. L. 105-261, div. C, title XXXI, §3158, Oct. 17, 1998, 112 Stat. 2257; Pub. L. 106-65, div. A, title X, §1067(3), Oct. 5, 1999, 113 Stat. 774; renumbered Pub. L. 107-314, div. D, title XLII, §4202, by Pub. L. 108-136, div. C, title XXXI, §3141(e)(3), Nov. 24, 2003, 117 Stat. 1758.)

CODIFICATION

Section was formerly set out as a note under section 2121 of Title 42, The Public Health and Welfare, prior to renumbering by Pub. L. 108-136.

AMENDMENTS

1999—Subsec. (c). Pub. L. 106-65 substituted “Committee on Armed Services” for “Committee on National Security” before “of the House of Representatives”.

§ 2523. Plan for stewardship, management, and certification of warheads in the nuclear weapons stockpile

(a) Plan requirement

The Secretary of Energy shall develop and annually update a plan for maintaining the nuclear weapons stockpile. The plan shall cover, at a minimum, stockpile stewardship, stockpile management, and program direction and shall be consistent with the programmatic and technical requirements of the most recent annual Nuclear Weapons Stockpile Memorandum.

(b) Plan elements

The plan and each update of the plan shall set forth the following:

- (1) The number of warheads (including active and inactive warheads) for each warhead type in the nuclear weapons stockpile.
- (2) The current age of each warhead type, and any plans for stockpile lifetime extensions and modifications or replacement of each warhead type.
- (3) The process by which the Secretary of Energy is assessing the lifetime, and requirements for lifetime extension or replacement, of the nuclear and nonnuclear components of the warheads (including active and inactive warheads) in the nuclear weapons stockpile.
- (4) The process used in recertifying the safety, security, and reliability of each warhead type in the nuclear weapons stockpile.
- (5) Any concerns which would affect the ability of the Secretary of Energy to recertify the safety, security, or reliability of warheads in the nuclear weapons stockpile (including active and inactive warheads).

(c) Annual submission of plan to Congress

The Secretary of Energy shall submit to Congress the plan developed under subsection (a) not later than March 15, 1998, and shall submit an updated version of the plan not later than May 1 of each year thereafter. The plan shall be submitted in both classified and unclassified form.

(Pub. L. 107-314, div. D, title XLII, § 4203, formerly Pub. L. 105-85, div. C, title XXXI, § 3151, Nov. 18, 1997, 111 Stat. 2041; renumbered Pub. L. 107-314, div. D, title XLII, § 4203, by Pub. L. 108-136, div. C, title XXXI, § 3141(e)(4), Nov. 24, 2003, 117 Stat. 1758; amended Pub. L. 108-375, div. C, title XXXI, § 3115, Oct. 28, 2004, 118 Stat. 2162.)

CODIFICATION

Section was formerly set out as a note under section 2121 of Title 42, The Public Health and Welfare, prior to renumbering by Pub. L. 108-136.

PRIOR PROVISIONS

Provisions similar to those in this section were contained in the following prior authorization act:

Pub. L. 104-106, div. C, title XXXI, § 3153, Feb. 10, 1996, 110 Stat. 624; repealed Pub. L. 105-85, div. C, title XXXI, § 3152(c), Nov. 18, 1997, 111 Stat. 2042.

AMENDMENTS

2004—Subsec. (c). Pub. L. 108-375 substituted “May 1 of each year thereafter” for “March 15 of each year thereafter”.

INCLUSION IN 2005 STOCKPILE STEWARDSHIP PLAN OF CERTAIN INFORMATION RELATING TO STOCKPILE STEWARDSHIP CRITERIA

Pub. L. 108-136, div. C, title XXXI, § 3133, Nov. 24, 2003, 117 Stat. 1751, provided that:

“(a) INCLUSION IN 2005 STOCKPILE STEWARDSHIP PLAN.—In submitting to Congress the updated version of the 2005 stockpile stewardship plan, the Secretary of Energy shall include the matters specified in subsection (b).

“(b) MATTERS INCLUDED.—The matters referred to in subsection (a) are the following:

“(1) An update of any information or criteria described in the report on stockpile stewardship criteria submitted under section 4202 of the Atomic Energy Defense Act [50 U.S.C. 2522] (as transferred and redesignated by section 3161(e)(3) [probably should be “3141(e)(3)”] of this Act).

“(2) A description of any additional information identified, or criteria established, on matters covered by such section 4202 during the period beginning on the date of the submittal of the report under such section 4202 and ending on the date of the submittal of the updated version of the plan under subsection (a) of this section.

“(3) For each science-based tool developed by the Department of Energy during such period—

“(A) a description of the relationship of such science-based tool to the collection of information needed to determine that the nuclear weapons stockpile is safe and reliable; and

“(B) a description of the criteria for judging whether or not such science-based tool provides for the collection of such information.

“(c) 2005 STOCKPILE STEWARDSHIP PLAN DEFINED.—In this section, the term ‘2005 stockpile stewardship plan’ means the updated version of the plan for maintaining the nuclear weapons stockpile developed under section 4203 of the Atomic Energy Defense Act [50 U.S.C. 2523] (as transferred and redesignated by section 3161(e)(4) [probably should be “3141(e)(4)”] of this Act) that is required to be submitted to Congress not later than March 15, 2005.”

§ 2524. Nuclear weapons stockpile life extension program

(a) Program required

The Secretary of Energy shall, in consultation with the Secretary of Defense, carry out a program to provide for the extension of the effective life of the weapons in the nuclear weapons stockpile.

(b) Administrative responsibility for program

(1) The program under subsection (a) shall be carried out through the element of the Department of Energy with responsibility for defense programs.

(2) For each budget submitted by the President to Congress under section 1105 of title 31, the amounts requested for the program shall be clearly identified in the budget justification materials submitted to Congress in support of that budget.

(Pub. L. 107-314, div. D, title XLII, § 4204, formerly Pub. L. 106-65, div. C, title XXXI, § 3133, Oct. 5, 1999, 113 Stat. 926; renumbered Pub. L. 107-314, div. D, title XLII, § 4204, and amended Pub. L. 108-136, div. C, title XXXI, § 3111, 3141(e)(5), Nov. 24, 2003, 117 Stat. 1743, 1758.)

CODIFICATION

Section was formerly set out as a note under section 2121 of Title 42, The Public Health and Welfare, prior to renumbering by Pub. L. 108-136.

AMENDMENTS

2003—Subsec. (c). Pub. L. 108-136, §3111, struck out subsec. (c), which related to a plan for the extension of the effective life of the weapons in the nuclear weapons stockpile.

Subsec. (c)(1). Pub. L. 108-136, §3141(e)(5)(D), substituted “October 5, 1999” for “the date of the enactment of this Act”.

Subsecs. (d) to (f). Pub. L. 108-136, §3111, struck out subsecs. (d) to (f). Prior to amendment, subsec. (d) required submittal to committees of the House and Senate of a plan for the extension of the effective life of the weapons in the nuclear weapons stockpile and annual updates of the plan, subsec. (e) required a GAO assessment of the plan and updates, and subsec. (f) stated the sense of Congress regarding funding of the program under subsec. (a).

EFFECTIVE DATE OF 2003 AMENDMENT

Pub. L. 108-136, div. C, title XXXI, §3111, Nov. 24, 2003, 117 Stat. 1743, provided that the amendment made by section 3111 is effective December 31, 2004.

§ 2525. Annual assessments and reports to the President and Congress regarding the condition of the United States nuclear weapons stockpile

(a) Annual assessments required

For each nuclear weapon type in the stockpile of the United States, each official specified in subsection (b) on an annual basis shall, to the extent such official is directly responsible for the safety, reliability, performance, or military effectiveness of that nuclear weapon type, complete an assessment of the safety, reliability, performance, or military effectiveness (as the case may be) of that nuclear weapon type.

(b) Covered officials

The officials referred to in subsection (a) are the following:

- (1) The head of each national security laboratory.
- (2) The commander¹ of the United States Strategic Command.

(c) Use of teams of experts for assessments

The head of each national security laboratory shall establish and use one or more teams of experts, known as “red teams”, to assist in the assessments required by subsection (a). Each such team shall include experts from both of the other national security laboratories. Each such team for a national security laboratory shall—

- (1) review the matters covered by the assessments under subsection (a) performed by the head of that laboratory;
- (2) subject such matters to challenge; and
- (3) submit the results of such review and challenge, together with the findings and recommendations of such team with respect to such review and challenge, to the head of that laboratory.

(d) Report on assessments

Not later than December 1 of each year, each official specified in subsection (b) shall submit to the Secretary concerned, and to the Nuclear Weapons Council, a report on the assessments that such official was required by subsection (a) to complete. The report shall include the following:

- (1) The results of each such assessment.
- (2)(A) Such official's determination as to whether or not one or more underground nuclear tests are necessary to resolve any issues identified in the assessments and, if so—

- (i) an identification of the specific underground nuclear tests that are necessary to resolve such issues; and
- (ii) a discussion of why options other than an underground nuclear test are not available or would not resolve such issues.

(B) An identification of the specific underground nuclear tests which, while not necessary, might have value in resolving any such issues and a discussion of the anticipated value of conducting such tests.

(C) Such official's determination as to the readiness of the United States to conduct the underground nuclear tests identified under subparagraphs (A)(i) and (B), if directed by the President to do so.

(3) In the case of a report submitted by the head of a national security laboratory—

(A) a concise statement regarding the adequacy of the science-based tools and methods being used to determine the matters covered by the assessments;

(B) a concise statement regarding the adequacy of the tools and methods employed by the manufacturing infrastructure required by section 2532 of this title to identify and fix any inadequacy with respect to the matters covered by the assessments; and

(C) a concise summary of the findings and recommendations of any teams under subsection (c) that relate to the assessments, together with a discussion of those findings and recommendations.

(4) In the case of a report submitted by the Commander of the United States Strategic Command, a discussion of the relative merits of other nuclear weapon types (if any), or compensatory measures (if any) that could be taken, that could enable accomplishment of the missions of the nuclear weapon types to which the assessments relate, should such assessments identify any deficiency with respect to such nuclear weapon types.

(5) An identification and discussion of any matter having an adverse effect on the capability of the official submitting the report to accurately determine the matters covered by the assessments.

(e) Submittals to the President and Congress

(1) Not later than March 1 of each year, the Secretary of Defense and the Secretary of Energy shall submit to the President—

(A) each report, without change, submitted to either Secretary under subsection (d) during the preceding year;

(B) any comments that the Secretaries individually or jointly consider appropriate with respect to each such report;

(C) the conclusions that the Secretaries individually or jointly reach as to the safety, reliability, performance, and military effectiveness of the nuclear weapons stockpile of the United States; and

(D) any other information that the Secretaries individually or jointly consider appropriate.

¹ So in original. Probably should be capitalized.

(2) Not later than March 15 of each year, the President shall forward to Congress the matters received by the President under paragraph (1) for that year, together with any comments the President considers appropriate.

(f) Classified form

Each submittal under subsection (e) shall be in classified form only, with the classification level required for each portion of such submittal marked appropriately.

(g) Definitions

In this section:

(1) The term “national security laboratory” has the meaning given such term in section 2471 of this title.

(2) The term “Secretary concerned” means—

(A) the Secretary of Energy, with respect to matters concerning the Department of Energy; and

(B) the Secretary of Defense, with respect to matters concerning the Department of Defense.

(h) First submissions

(1) The first submissions made under subsection (d) shall be the submissions required to be made in 2003.

(2) The first submissions made under subsection (e) shall be the submissions required to be made in 2004.

(Pub. L. 107–314, div. D, title XLII, § 4205, formerly div. C, title XXXI, § 3141, Dec. 2, 2002, 116 Stat. 2730; renumbered div. D, title XLII, § 4205, and amended Pub. L. 108–136, div. C, title XXXI, § 3141(e)(6), Nov. 24, 2003, 117 Stat. 1759.)

CODIFICATION

Section was formerly classified to section 7274s of Title 42, The Public Health and Welfare, prior to renumbering by Pub. L. 108–136.

AMENDMENTS

2003—Subsec. (d)(3)(B). Pub. L. 108–136, § 3141(e)(6)(D), substituted “section 2532 of this title” for “section 3137 of the National Defense Authorization Act for Fiscal Year 1996 (42 U.S.C. 2121 note)”.

§ 2526. Form of certifications regarding the safety or reliability of the nuclear weapons stockpile

Any certification submitted to the President by the Secretary of Defense or the Secretary of Energy regarding confidence in the safety or reliability of a nuclear weapon type in the United States nuclear weapons stockpile shall be submitted in classified form only.

(Pub. L. 107–314, div. D, title XLII, § 4206, formerly Pub. L. 106–398, § 1 [div. C, title XXXI, § 3194], Oct. 30, 2000, 114 Stat. 1654, 1654A–481; renumbered Pub. L. 107–314, div. D, title XLII, § 4206, by Pub. L. 108–136, div. C, title XXXI, § 3141(e)(7), Nov. 24, 2003, 117 Stat. 1759.)

CODIFICATION

Section was formerly set out as a note under section 2121 of Title 42, The Public Health and Welfare, prior to renumbering by Pub. L. 108–136.

§ 2527. Nuclear test ban readiness program

(a) Findings

The Congress makes the following findings:

(1) On September 17, 1987, the United States and the Soviet Union announced that they would resume full-scale, stage-by-stage negotiations on issues relating to nuclear testing, including further intermediate limitations on nuclear testing leading to the ultimate objective of a comprehensive nuclear test ban.

(2) It was agreed that the first step in these negotiations would be to reach agreement on verification measures that will make possible the ratification of the Threshold Test Ban Treaty of 1974 and the Peaceful Nuclear Explosions Treaty of 1976.

(3) To achieve the agreement on verification measures, the United States and the Soviet Union have agreed to design and conduct a Joint Verification Experiment at the test sites of each country during the summer of 1988.

(4) At the Moscow summit in May 1988, President Reagan and General Secretary Gorbachev reaffirmed their commitment to negotiations on “effective verification measures which will make it possible to ratify the Threshold Test Ban Treaty of 1974 and Peaceful Nuclear Explosions Treaty of 1976, and proceed to negotiating further intermediate limitations on nuclear testing leading to the ultimate objective of the complete cessation of nuclear testing as part of an effective disarmament process”.

(b) Establishment of program

The Secretary of Energy shall establish and support a program to assure that the United States is in a position to maintain the reliability, safety, and continued deterrent effect of its stockpile of existing nuclear weapons designs in the event that a low-threshold or comprehensive ban on nuclear explosives testing is negotiated and ratified within the framework agreed to by the United States and the Soviet Union.

(c) Purposes of program

The purposes of the program under subsection (b) shall be the following:

(1) To assure that the United States maintains a vigorous program of stockpile inspection and non-explosive testing so that, if a low-threshold or comprehensive test ban is entered into, the United States remains able to detect and identify potential problems in stockpile reliability and safety in existing designs of nuclear weapons.

(2) To assure that the specific materials, components, processes, and personnel needed for the remanufacture of existing nuclear weapons or the substitution of alternative nuclear warheads are available to support such remanufacture or substitution if such action becomes necessary in order to satisfy reliability and safety requirements under a low-threshold or comprehensive test ban agreement.

(3) To assure that a vigorous program of research in areas related to nuclear weapons science and engineering is supported so that, if a low-threshold or comprehensive test ban agreement is entered into, the United States is able to maintain a base of technical knowledge about nuclear weapons design and nuclear weapons effects.

(d) Conduct of program

The Secretary of Energy shall carry out the program provided for in subsection (b). The program shall be carried out with the participation of representatives of the Department of Defense, the nuclear weapons production facilities, and the national nuclear weapons laboratories.

(Pub. L. 107-314, div. D, title XLII, §4207, formerly Pub. L. 100-456, div. A, title XIV, §1436, Sept. 29, 1988, 102 Stat. 2075; Pub. L. 105-85, div. C, title XXXI, §3152(i), Nov. 18, 1997, 111 Stat. 2042; renumbered Pub. L. 107-314, div. D, title XLII, §4207, and amended Pub. L. 108-136, div. C, title XXXI, §3141(e)(8), Nov. 24, 2003, 117 Stat. 1759.)

CODIFICATION

Section was formerly set out as a note under section 2121 of Title 42, The Public Health and Welfare, prior to renumbering by Pub. L. 108-136.

AMENDMENTS

2003—Pub. L. 108-136, §3141(e)(8)(D), made technical amendment to section catchline.

1997—Subsec. (e). Pub. L. 105-85 struck out heading and text of subsec. (e). Text read as follows: “The Secretary of Energy shall submit to Congress each year an unclassified report (with a classified annex as necessary) that describes the progress made to the date of the report in achieving the purposes of the program required to be established under subsection (b).”

§ 2528. Study on nuclear test readiness postures**(a) Report**

Not later than February 15, 1996, the Secretary of Energy shall submit to Congress a report on the costs, programmatic issues, and other issues associated with sustaining the capability of the Department of Energy—

(1) to conduct an underground nuclear test 6 months after the date on which the President determines that such a test is necessary to ensure the national security of the United States;

(2) to conduct such a test 18 months after such date; and

(3) to conduct such a test 36 months after such date.

(b) Biennial update report

(1) Not later than February 15 of each odd-numbered year, the Secretary shall submit to the congressional defense committees a report containing an update of the report required under subsection (a), as updated by any report previously submitted under this paragraph.

(2) Each report under paragraph (1) shall include, as of the date of such report, the following:

(A) A list and description of the workforce skills and capabilities that are essential to carry out underground nuclear tests at the Nevada Test Site.

(B) A list and description of the infrastructure and physical plant that are essential to carry out underground nuclear tests at the Nevada Test Site.

(C) A description of the readiness status of the skills and capabilities described in subparagraph (A) and of the infrastructure and physical plant described in subparagraph (B).

(3) Each report under paragraph (1) shall be submitted in unclassified form, but may include a classified annex.

(Pub. L. 107-314, div. D, title XLII, §4208, formerly Pub. L. 104-106, div. C, title XXXI, §3152, Feb. 10, 1996, 110 Stat. 623; Pub. L. 106-398, §1 [div. C, title XXXI, §3192], Oct. 30, 2000, 114 Stat. 1654, 1654A-480; renumbered Pub. L. 107-314, div. D, title XLII, §4208, by Pub. L. 108-136, div. C, title XXXI, §3141(e)(9), Nov. 24, 2003, 117 Stat. 1759.)

CODIFICATION

Section was formerly set out as a note under section 2121 of Title 42, The Public Health and Welfare, prior to renumbering by Pub. L. 108-136.

AMENDMENTS

2000—Pub. L. 106-398 designated existing provisions as subsec. (a), inserted heading, and added subsec. (b).

§ 2528a. Readiness posture for resumption by the United States of underground nuclear weapons tests**(a) Readiness posture required**

Commencing not later than October 1, 2006, the Secretary of Energy shall achieve, and thereafter maintain, a readiness posture of not more than 18 months for resumption by the United States of underground tests of nuclear weapons.

(b) Description of requirement

For purposes of this section, a readiness posture of not more than 18 months for resumption by the United States of underground tests of nuclear weapons is achieved when the Department of Energy has the capability to resume such tests, if directed by the President to resume such tests, not later than 18 months after the date on which the President so directs.

(Pub. L. 108-136, div. C, title XXXI, §3113, Nov. 24, 2003, 117 Stat. 1743.)

CODIFICATION

Section was enacted as part of the National Defense Authorization Act for Fiscal Year 2004, and not as part of the Atomic Energy Defense Act which comprises this chapter.

§ 2529. Requirements for specific request for new or modified nuclear weapons**(a) Requirement for request for funds for development**

(1) In any fiscal year after fiscal year 2002 in which the Secretary of Energy plans to carry out activities described in paragraph (2) relating to the development of a new nuclear weapon or modified nuclear weapon, the Secretary shall specifically request funds for such activities in the budget of the President for that fiscal year under section 1105(a) of title 31.

(2) The activities described in this paragraph are as follows:

(A) The conduct, or provision for conduct, of research and development which could lead to the production of a new nuclear weapon by the United States.

(B) The conduct, or provision for conduct, of engineering or manufacturing to carry out the

production of a new nuclear weapon by the United States.

(C) The conduct, or provision for conduct, of research and development which could lead to the production of a modified nuclear weapon by the United States.

(D) The conduct, or provision for conduct, of engineering or manufacturing to carry out the production of a modified nuclear weapon by the United States.

(b) Budget request format

The Secretary shall include in a request for funds under subsection (a) the following:

(1) In the case of funds for activities described in subparagraph (A) or (C) of subsection (a)(2), a single dedicated line item for all such activities for new nuclear weapons or modified nuclear weapons that are in phase 1, 2, or 2A or phase 6.1, 6.2, or 6.2A (as the case may be), or any concept work prior to phase 1 or 6.1 (as the case may be), of the nuclear weapons acquisition process.

(2) In the case of funds for activities described in subparagraph (B) or (D) of subsection (a)(2), a dedicated line item for each such activity for a new nuclear weapon or modified nuclear weapon that is in phase 3 or higher or phase 6.3 or higher (as the case may be) of the nuclear weapons acquisition process.

(c) Exception

Subsection (a) shall not apply to funds for purposes of conducting, or providing for the conduct of, research and development, or manufacturing and engineering, determined by the Secretary to be necessary—

(1) for the nuclear weapons life extension program;

(2) to modify an existing nuclear weapon solely to address safety or reliability concerns; or

(3) to address proliferation concerns.

(d) Definitions

In this section:

(1) The term “life extension program” means the program to repair or replace non-nuclear components, or to modify the pit or canned subassembly, of nuclear weapons that are in the nuclear weapons stockpile on December 2, 2002, in order to assure that such nuclear weapons retain the ability to meet the military requirements applicable to such nuclear weapons when first placed in the nuclear weapons stockpile.

(2) The term “modified nuclear weapon” means a nuclear weapon that contains a pit or canned subassembly, either of which—

(A) is in the nuclear weapons stockpile as of December 2, 2002; and

(B) is being modified in order to meet a military requirement that is other than the military requirements applicable to such nuclear weapon when first placed in the nuclear weapons stockpile.

(3) The term “new nuclear weapon” means a nuclear weapon that contains a pit or canned subassembly, either of which is neither—

(A) in the nuclear weapons stockpile on December 2, 2002; nor

(B) in production as of that date.

(Pub. L. 107-314, div. D, title XLII, § 4209, formerly div. C, title XXXI, § 3143, Dec. 2, 2002, 116 Stat. 2733; renumbered div. D, title XLII, § 4209, by Pub. L. 108-136, div. C, title XXXI, § 3141(e)(10), Nov. 24, 2003, 117 Stat. 1759.)

CODIFICATION

Section was formerly classified to section 7271d of Title 42, The Public Health and Welfare, prior to renumbering by Pub. L. 108-136.

LIMITATION ON DEVELOPMENT OF LOW-YIELD NUCLEAR WEAPONS

Pub. L. 108-136, div. C, title XXXI, § 3116(c), Nov. 24, 2003, 117 Stat. 1746, provided that: “The Secretary of Energy may not commence the engineering development phase, or any subsequent phase, of a low-yield nuclear weapon unless specifically authorized by Congress.”

§ 2530. Limitation on underground nuclear weapons tests

No underground test of nuclear weapons may be conducted by the United States after September 30, 1996, unless a foreign state conducts a nuclear test after this date, at which time the prohibition on United States nuclear testing is lifted.

(Pub. L. 107-314, div. D, title XLII, § 4210, formerly Pub. L. 102-377, title V, § 507(f), Oct. 2, 1992, 106 Stat. 1345; renumbered Pub. L. 107-314, div. D, title XLII, § 4210, and amended Pub. L. 108-136, div. C, title XXXI, § 3141(e)(11), Nov. 24, 2003, 117 Stat. 1760.)

CODIFICATION

Section was formerly set out in a note under section 2121 of Title 42, The Public Health and Welfare, prior to renumbering by Pub. L. 108-136.

Pub. L. 108-136, div. C, title XXXI, § 3141(e)(11), Nov. 24, 2003, 117 Stat. 1760, which directed the transfer to this section of section 507(f) of the Energy and Water Development Appropriations Act, 1993, “(Public Law 102-337; 106 Stat. 1345)”, was executed by transferring section 507(f) of Pub. L. 102-377 to this section, to reflect the probable intent of Congress.

AMENDMENTS

2003—Pub. L. 108-136, § 3141(e)(11)(C)(i), inserted section catchline.

§ 2531. Testing of nuclear weapons

(a) In general

Of the funds authorized to be appropriated under section 3101(a)(2) of the National Defense Authorization Act for Fiscal Year 1994 (Public Law 103-160) for the Department of Energy for fiscal year 1994 for weapons testing, \$211,326,000 shall be available for infrastructure maintenance at the Nevada Test Site, and for maintaining the technical capability to resume underground nuclear testing at the Nevada Test Site.

(b) Atmospheric testing of nuclear weapons

None of the funds appropriated pursuant to the National Defense Authorization Act for Fiscal Year 1994 or any other Act for any fiscal year may be available to maintain the capability of the United States to conduct atmospheric testing of a nuclear weapon.

(Pub. L. 107-314, div. D, title XLII, § 4211, formerly Pub. L. 103-160, div. C, title XXXI, § 3137,

Nov. 30, 1993, 107 Stat. 1946; renumbered Pub. L. 107-314, div. D, title XLII, § 4211, and amended Pub. L. 108-136, div. C, title XXXI, § 3141(e)(12), Nov. 24, 2003, 117 Stat. 1760.)

REFERENCES IN TEXT

The National Defense Authorization Act for Fiscal Year 1994, referred to in text, is Pub. L. 103-160, Nov. 30, 1993, 107 Stat. 1547. Section 3101(a)(2) of the Act, 107 Stat. 1936, is not classified to the Code. For complete classification of this Act to the Code, see Tables.

CODIFICATION

Section was formerly set out as a note under section 2121 of Title 42, The Public Health and Welfare, prior to renumbering by Pub. L. 108-136.

AMENDMENTS

2003—Subsec. (a), Pub. L. 108-136, § 3141(e)(12)(D)(i), inserted “of the National Defense Authorization Act for Fiscal Year 1994 (Public Law 103-160)” after “section 3101(a)(2)”.

Subsec. (b), Pub. L. 108-136, § 3141(e)(12)(D)(ii), substituted “the National Defense Authorization Act for Fiscal Year 1994” for “this Act”.

§ 2532. Manufacturing infrastructure for refabrication and certification of nuclear weapons stockpile

(a) Manufacturing program

(1) The Secretary of Energy shall carry out a program for purposes of establishing within the Government a manufacturing infrastructure that has the capabilities of meeting the following objectives as specified in the Nuclear Posture Review:

(A) To provide a stockpile surveillance engineering base.

(B) To refabricate and certify weapon components and types in the enduring nuclear weapons stockpile, as necessary.

(C) To fabricate and certify new nuclear warheads, as necessary.

(D) To support nuclear weapons.

(E) To supply sufficient tritium in support of nuclear weapons to ensure an upload hedge in the event circumstances require.

(2) The purpose of the program carried out under paragraph (1) shall also be to develop manufacturing capabilities and capacities necessary to meet the requirements specified in the annual Nuclear Weapons Stockpile Review.

(b) Required capabilities

The manufacturing infrastructure established under the program under subsection (a) shall include the following capabilities (modernized to attain the objectives referred to in that subsection):

(1) The weapons assembly capabilities of the Pantex Plant.

(2) The weapon secondary fabrication capabilities of the Y-12 Plant, Oak Ridge, Tennessee.

(3) The capabilities of the Savannah River Site relating to tritium recycling and fissile materials components processing and fabrication.

(4) The non-nuclear component capabilities of the Kansas City Plant.

(c) Nuclear Posture Review

For purposes of subsection (a), the term “Nuclear Posture Review” means the Department of

Defense Nuclear Posture Review as contained in the Report of the Secretary of Defense to the President and the Congress dated February 19, 1995, or subsequent such reports.

(d) Funding

Of the funds authorized to be appropriated under section 3101(b) of the National Defense Authorization Act for Fiscal Year 1996 (Public Law 104-106), \$143,000,000 shall be available for carrying out the program required under this section, of which—

(1) \$35,000,000 shall be available for activities at the Pantex Plant;

(2) \$30,000,000 shall be available for activities at the Y-12 Plant, Oak Ridge, Tennessee;

(3) \$35,000,000 shall be available for activities at the Savannah River Site; and

(4) \$43,000,000 shall be available for activities at the Kansas City Plant.

(e) Plan and report

The Secretary shall develop a plan for the implementation of this section. Not later than March 1, 1996, the Secretary shall submit to Congress a report on the obligations the Secretary has incurred, and plans to incur, during fiscal year 1996 for the program referred to in subsection (a).

(Pub. L. 107-314, div. D, title XLII, § 4212, formerly Pub. L. 104-106, div. C, title XXXI, § 3137, Feb. 10, 1996, 110 Stat. 620; Pub. L. 104-201, div. C, title XXXI, § 3132(a), (b), Sept. 23, 1996, 110 Stat. 2829; renumbered Pub. L. 107-314, div. D, title XLII, § 4212, and amended Pub. L. 108-136, div. C, title XXXI, § 3141(e)(13), Nov. 24, 2003, 117 Stat. 1760.)

REFERENCES IN TEXT

Section 3101(b) of the National Defense Authorization Act for Fiscal Year 1996, referred to in subsec. (d), is section 3101(b) of Pub. L. 104-106, div. C, title XXXI, Feb. 10, 1996, 110 Stat. 609, which is not classified to the Code.

CODIFICATION

Section was formerly set out as a note under section 2121 of Title 42, The Public Health and Welfare, prior to renumbering by Pub. L. 108-136.

AMENDMENTS

2003—Subsec. (d), Pub. L. 108-136, § 3141(e)(13)(D), inserted “of the National Defense Authorization Act for Fiscal Year 1996 (Public Law 104-106)” after “section 3101(b)”.

1996—Subsec. (a), Pub. L. 104-201, § 3132(a), designated existing provisions as par. (1), redesignated former pars. (1) to (5) as subpars. (A) to (E), respectively, and added par. (2).

Subsec. (b)(3), Pub. L. 104-201, § 3132(b), amended par. (3) generally. Prior to amendment, par. (3) read as follows: “The tritium production, recycling, and other weapons-related capabilities of the Savannah River Site.”

§ 2533. Reports on critical difficulties at nuclear weapons laboratories and nuclear weapons production plants

(a) Reports by heads of laboratories and plants

In the event of a difficulty at a nuclear weapons laboratory or a nuclear weapons production plant that has a significant bearing on confidence in the safety or reliability of a nuclear

weapon or nuclear weapon type, the head of the laboratory or plant, as the case may be, shall submit to the Assistant Secretary of Energy for Defense Programs a report on the difficulty. The head of the laboratory or plant shall submit the report as soon as practicable after discovery of the difficulty.

(b) Transmittal by Assistant Secretary

Not later than 10 days after receipt of a report under subsection (a), the Assistant Secretary shall transmit the report (together with the comments of the Assistant Secretary) to the congressional defense committees, to the Secretary of Energy and the Secretary of Defense, and to the President.

(c) Omitted

(d) Inclusion of reports in annual stockpile certification

Any report submitted pursuant to subsection (a) shall also be included with the decision documents that accompany the annual certification of the safety and reliability of the United States nuclear weapons stockpile which is provided to the President for the year in which such report is submitted.

(e) Definitions

In this section:

(1) The term “nuclear weapons laboratory” means the following:

(A) Lawrence Livermore National Laboratory, California.

(B) Los Alamos National Laboratory, New Mexico.

(C) Sandia National Laboratories.

(2) The term “nuclear weapons production plant” means the following:

(A) The Pantex Plant, Texas.

(B) The Savannah River Site, South Carolina.

(C) The Kansas City Plant, Missouri.

(D) The Y-12 Plant, Oak Ridge, Tennessee.

(Pub. L. 107-314, div. D, title XLII, § 4213, formerly Pub. L. 104-201, div. C, title XXXI, § 3159, Sept. 23, 1996, 110 Stat. 2842; Pub. L. 105-85, div. A, title XIII, § 1305(c), (d), Nov. 18, 1997, 111 Stat. 1954; Pub. L. 106-65, div. C, title XXXI, § 3163(f), Oct. 5, 1999, 113 Stat. 946; renumbered Pub. L. 107-314, div. D, title XLII, § 4213, by Pub. L. 108-136, div. C, title XXXI, § 3141(e)(14), Nov. 24, 2003, 117 Stat. 1760.)

CODIFICATION

Section was formerly classified to section 7274o of Title 42, The Public Health and Welfare, prior to renumbering by Pub. L. 108-136.

Section is comprised of section 4213 of Pub. L. 107-314. Subsec. (c) of section 4213 of Pub. L. 107-314 amended section 179 of Title 10, Armed Forces.

AMENDMENTS

1999—Subsecs. (d), (e). Pub. L. 106-65 added subsec. (d) and redesignated former subsec. (d) as (e).

1997—Subsec. (b). Pub. L. 105-85 substituted “Not later than 10 days” for “As soon as practicable” and “committees,” for “committees and” and inserted before period at end “, and to the President”.

TRANSFER OF FUNCTIONS

For transfer of functions, personnel, assets, and liabilities of the advanced scientific computing research

program and activities at Lawrence Livermore National Laboratory, including the functions of the Secretary of Energy relating thereto, to the Secretary of Homeland Security, see sections 183(1), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

All national security functions and activities performed immediately before Oct. 5, 1999, by nuclear weapons laboratories and production facilities defined in this section, transferred to the Administrator for Nuclear Security of the National Nuclear Security Administration of the Department of Energy, see section 2481 of this title.

PART B—TRITIUM

§ 2541. Tritium production program

(a) Establishment of program

The Secretary of Energy shall establish a tritium production program that is capable of meeting the tritium requirements of the United States for nuclear weapons. In carrying out the tritium production program, the Secretary shall—

(1) complete the tritium supply and recycling environmental impact statement in preparation by the Secretary as of February 10, 1996; and

(2) assess alternative means for tritium production, including production through—

(A) types of new and existing reactors, including multipurpose reactors (such as advanced light water reactors and gas turbine gas-cooled reactors) capable of meeting both the tritium production requirements and the plutonium disposition requirements of the United States for nuclear weapons;

(B) an accelerator; and

(C) multipurpose reactor projects carried out by the private sector and the Government.

(b) Funding

Of funds authorized to be appropriated to the Department of Energy pursuant to section 3101 of the National Defense Authorization Act for Fiscal Year 1996 (Public Law 104-106), not more than \$50,000,000 shall be available for the tritium production program established pursuant to subsection (a).

(c) Location of tritium production facility

The Secretary shall locate any new tritium production facility of the Department of Energy at the Savannah River Site, South Carolina.

(d) Cost-benefit analysis

(1) The Secretary shall include in the statements referred to in paragraph (2) a comparison of the costs and benefits of carrying out two projects for the separate performance of the tritium production mission of the Department and the plutonium disposition mission of the Department with the costs and benefits of carrying out one multipurpose project for the performance of both such missions.

(2) The statements referred to in paragraph (1) are—

(A) the environmental impact statement referred to in subsection (a)(1);

(B) the plutonium disposition environmental impact statement in preparation by the Secretary as of February 10, 1996; and

(C) assessments related to the environmental impact statements referred to in subparagraphs (A) and (B).

(e) Report

Not later than 45 days after February 10, 1996, the Secretary shall submit to the Committee on Armed Services of the Senate and the Committee on National Security of the House of Representatives a report on the tritium production program established pursuant to subsection (a). The report shall include a specification of—

- (1) the planned expenditures of the Department during fiscal year 1996 for any of the alternative means for tritium production assessed under subsection (a)(2);
- (2) the amount of funds required to be expended by the Department, and the program milestones (including feasibility demonstrations) required to be met, during fiscal years 1997 through 2001 to ensure tritium production beginning not later than 2005 that is adequate to meet the tritium requirements of the United States for nuclear weapons; and
- (3) the amount of such funds to be expended and such program milestones to be met during such fiscal years to ensure such tritium production beginning not later than 2011.

(f) Tritium targets

Of the funds made available pursuant to subsection (b), not more than \$5,000,000 shall be available for the Idaho National Engineering Laboratory for the test and development of nuclear reactor tritium targets for the types of reactors assessed under subsection (a)(2)(A).

(Pub. L. 107-314, div. D, title XLII, § 4231, formerly Pub. L. 104-106, div. C, title XXXI, § 3133, Feb. 10, 1996, 110 Stat. 618; renumbered Pub. L. 107-314, div. D, title XLII, § 4231, and amended Pub. L. 108-136, div. C, title XXXI, § 3141(e)(16), Nov. 24, 2003, 117 Stat. 1761.)

REFERENCES IN TEXT

Section 3101 of the National Defense Authorization Act for Fiscal Year 1996, referred to in subsec. (b), is section 3101 of Pub. L. 104-106, div. C, title XXXI, Feb. 10, 1996, 110 Stat. 608, which is not classified to the Code.

CODIFICATION

Section was formerly set out as a note under section 2121 of Title 42, The Public Health and Welfare, prior to renumbering by Pub. L. 108-136.

AMENDMENTS

2003—Subsec. (a)(1). Pub. L. 108-136, § 3141(e)(16)(D)(i), substituted “February 10, 1996” for “the date of the enactment of this Act”.

Subsec. (b). Pub. L. 108-136, § 3141(e)(16)(D)(ii), inserted “of the National Defense Authorization Act for Fiscal Year 1996 (Public Law 104-106)” after “section 3101”.

Subsecs. (d)(2)(B), (e). Pub. L. 108-136, § 3141(e)(16)(D)(i), substituted “February 10, 1996” for “the date of the enactment of this Act”.

CHANGE OF NAME

Committee on National Security of House of Representatives changed to Committee on Armed Services of House of Representatives by House Resolution No. 5, One Hundred Sixth Congress, Jan. 6, 1999.

§ 2542. Tritium recycling

(a) In general

Except as provided in subsection (b), the following activities shall be carried out at the Savannah River Site, South Carolina:

- (1) All tritium recycling for weapons, including tritium refitting.
- (2) All activities regarding tritium formerly carried out at the Mound Plant, Ohio.

(b) Exception

The following activities may be carried out at the Los Alamos National Laboratory, New Mexico:

- (1) Research on tritium.
- (2) Work on tritium in support of the defense inertial confinement fusion program.
- (3) Provision of technical assistance to the Savannah River Site regarding the weapons surveillance program.

(Pub. L. 107-314, div. D, title XLII, § 4232, formerly Pub. L. 104-106, div. C, title XXXI, § 3136, Feb. 10, 1996, 110 Stat. 620; renumbered Pub. L. 107-314, div. D, title XLII, § 4232, by Pub. L. 108-136, div. C, title XXXI, § 3141(e)(17), Nov. 24, 2003, 117 Stat. 1761.)

§ 2543. Tritium production

(a) New tritium production facility

The Secretary of Energy shall commence planning and design activities and infrastructure development for a new tritium production facility.

(b) In-reactor tests

The Secretary may perform in-reactor tests of tritium target rods as part of the activities carried out under the commercial light water reactor program.

(Pub. L. 107-314, div. D, title XLII, § 4233, formerly Pub. L. 104-201, div. C, title XXXI, § 3133(c), (d), Sept. 23, 1996, 110 Stat. 2830; renumbered Pub. L. 107-314, div. D, title XLII, § 4233, and amended Pub. L. 108-136, div. C, title XXXI, § 3141(e)(18), Nov. 24, 2003, 117 Stat. 1761.)

AMENDMENTS

2003—Pub. L. 108-136, § 3141(e)(18)(C)(i), (ii), inserted section catchline and redesignated subsecs. (c) and (d) of section 3133 of Pub. L. 104-201, which were transferred to this section, as subsecs. (a) and (b), respectively, of this section.

Subsec. (a). Pub. L. 108-136, § 3141(e)(18)(C)(iii), inserted “of Energy” after “The Secretary”.

§ 2544. Modernization and consolidation of tritium recycling facilities

(a) In general

The Secretary of Energy shall carry out activities at the Savannah River Site, South Carolina, to—

- (1) modernize and consolidate the facilities for recycling tritium from weapons; and
- (2) provide a modern tritium extraction facility so as to ensure that such facilities have a capacity to recycle tritium from weapons that is adequate to meet the requirements for tritium for weapons specified in the Nuclear Weapons Stockpile Memorandum.

(b) Funding

Of the funds authorized to be appropriated to the Department of Energy pursuant to section

3101 of the National Defense Authorization Act for Fiscal Year 1997 (Public Law 104-201), not more than \$9,000,000 shall be available for activities under subsection (a).

(Pub. L. 107-314, div. D, title XLII, § 4234, formerly Pub. L. 104-201, div. C, title XXXI, § 3134, Sept. 23, 1996, 110 Stat. 2830; renumbered Pub. L. 107-314, div. D, title XLII, § 4234, and amended Pub. L. 108-136, div. C, title XXXI, § 3141(e)(19), Nov. 24, 2003, 117 Stat. 1762.)

REFERENCES IN TEXT

Section 3101 of the National Defense Authorization Act for Fiscal Year 1997, referred to in subsec. (b), is section 3101 of Pub. L. 104-201, div. C, title XXXI, Sept. 23, 1996, 110 Stat. 2820, which is not classified to the Code.

AMENDMENTS

2003—Subsec. (b). Pub. L. 108-136, § 3141(e)(19)(D), inserted “of the National Defense Authorization Act for Fiscal Year 1997 (Public Law 104-201)” after “section 3101”.

§ 2545. Procedures for meeting tritium production requirements

(a) Production of new tritium

The Secretary of Energy shall produce new tritium to meet the requirements of the Nuclear Weapons Stockpile Memorandum at the Tennessee Valley Authority Watts Bar or Sequoyah nuclear power plants consistent with the Secretary's December 22, 1998, decision document designating the Secretary's preferred tritium production technology.

(b) Support

To support the method of tritium production set forth in subsection (a), the Secretary shall design and construct a new tritium extraction facility in the H-Area of the Savannah River Site, Aiken, South Carolina.

(c) Design and engineering development

The Secretary shall—

(1) complete preliminary design and engineering development of the Accelerator Production of Tritium technology design as a backup source of tritium to the source set forth in subsection (a) and consistent with the Secretary's December 22, 1998, decision document; and

(2) make available those funds necessary to complete engineering development and demonstration, preliminary design, and detailed design of key elements of the system consistent with the Secretary's decision document of December 22, 1998.

(Pub. L. 107-314, div. D, title XLII, § 4235, formerly Pub. L. 106-65, div. C, title XXXI, § 3134, Oct. 5, 1999, 113 Stat. 927; renumbered Pub. L. 107-314, div. D, title XLII, § 4235, by Pub. L. 108-136, div. C, title XXXI, § 3141(e)(20), Nov. 24, 2003, 117 Stat. 1762.)

SUBCHAPTER III—PROLIFERATION MATTERS

§ 2561. International cooperative stockpile stewardship

(a) Funding prohibition

No funds authorized to be appropriated or otherwise available to the Department of Energy

for any fiscal year may be obligated or expended to conduct any activities associated with international cooperative stockpile stewardship.

(b) Exceptions

Subsection (a) does not apply to the following:

(1) Activities conducted between the United States and the United Kingdom.

(2) Activities conducted between the United States and France.

(3) Activities carried out under title XIV of the National Defense Authorization Act for Fiscal Year 1998 (Public Law 105-85) relating to cooperative threat reduction with states of the former Soviet Union.

(Pub. L. 107-314, div. D, title XLIII, § 4301, formerly Pub. L. 105-85, div. C, title XXXI, § 3133, Nov. 18, 1997, 111 Stat. 2036; Pub. L. 105-261, div. A, title X, § 1069(b)(3), div. C, title XXXI, § 3131, Oct. 17, 1998, 112 Stat. 2136, 2246; renumbered Pub. L. 107-314, div. D, title XLIII, § 4301, and amended Pub. L. 108-136, div. C, title XXXI, § 3141(f)(2), Nov. 24, 2003, 117 Stat. 1762.)

REFERENCES IN TEXT

The National Defense Authorization Act for Fiscal Year 1998, referred to in subsec. (b)(2), is Pub. L. 105-85, Nov. 18, 1997, 111 Stat. 1629, as amended. Several sections of title XIV of Pub. L. 105-85 are classified as notes under section 5952 of Title 22, Foreign Relations and Intercourse. For complete classification of title XIV to the Code, see Tables.

CODIFICATION

Section was formerly classified to section 7273c of Title 42, The Public Health and Welfare, prior to renumbering by Pub. L. 108-136.

SIMILAR PROVISIONS

Provisions similar to those in this section were contained in the following prior authorization act:

Pub. L. 104-201, div. C, title XXXI, § 3138, Sept. 23, 1996, 110 Stat. 2830.

AMENDMENTS

2003—Subsec. (b)(3). Pub. L. 108-136, § 3141(f)(2)(D), substituted “the National Defense Authorization Act for Fiscal Year 1998 (Public Law 105-85)” for “this Act”.

1998—Subsec. (a). Pub. L. 105-261, § 3131, substituted “for any fiscal year” for “for fiscal year 1998”.

Subsec. (b)(3). Pub. L. 105-261, § 1069(b)(3), substituted “XIV” for “III”.

EFFECTIVE DATE OF 1998 AMENDMENT

Pub. L. 105-261, div. A, title X, § 1069(b), Oct. 17, 1998, 112 Stat. 2136, provided that the amendment made by that section is effective as of Nov. 18, 1997, and as if included in the National Defense Authorization Act for Fiscal Year 1998, Pub. L. 105-85, as enacted.

§ 2562. Nonproliferation initiatives and activities

(a) Initiative for Proliferation Prevention program

(1) Not more than 35 percent of the funds available in any fiscal year after fiscal year 1999 for the Initiatives for Proliferation Prevention program (IPP) may be obligated or expended by the Department of Energy national laboratories to carry out or provide oversight of any activities under that program.

(2)(A) None of the funds available in any fiscal year after fiscal year 1999 for the Initiatives for Proliferation Prevention program may be used

to increase or otherwise supplement the pay or benefits of a scientist or engineer if the scientist or engineer—

(i) is currently engaged in activities directly related to the design, development, production, or testing of chemical or biological weapons or a missile system to deliver such weapons; or

(ii) was not formerly engaged in activities directly related to the design, development, production, or testing of weapons of mass destruction or a missile system to deliver such weapons.

(B) None of the funds available in any fiscal year after fiscal year 1999 for the Initiatives for Proliferation Prevention program may be made available to an institute if the institute—

(i) is currently involved in activities described in subparagraph (A)(i); or

(ii) was not formerly involved in activities described in subparagraph (A)(ii).

(3)(A) No funds available for the Initiatives for Proliferation Prevention program may be provided to an institute or scientist under the program if the Secretary of Energy determines that the institute or scientist has made a scientific or business contact in any way associated with or related to weapons of mass destruction with a representative of a country of proliferation concern.

(B) For purposes of this paragraph, the term “country of proliferation concern” means any country so designated by the Director of Central Intelligence for purposes of the Initiatives for Proliferation Prevention program.

(4)(A) The Secretary of Energy shall prescribe procedures for the review of projects under the Initiatives for Proliferation Prevention program. The purpose of the review shall be to ensure the following:

(i) That the military applications of such projects, and any information relating to such applications, is not inadvertently transferred or utilized for military purposes.

(ii) That activities under the projects are not redirected toward work relating to weapons of mass destruction.

(iii) That the national security interests of the United States are otherwise fully considered before the commencement of the projects.

(B) Not later than 30 days after the date on which the Secretary prescribes the procedures required by subparagraph (A), the Secretary shall submit to Congress a report on the procedures. The report shall set forth a schedule for the implementation of the procedures.

(5)(A) The Secretary shall evaluate the projects carried out under the Initiatives for Proliferation Prevention program for commercial purposes to determine whether or not such projects are likely to achieve their intended commercial objectives.

(B) If the Secretary determines as a result of the evaluation that a project is not likely to achieve its intended commercial objective, the Secretary shall terminate the project.

(6) Funds appropriated for the Initiatives for Proliferation Prevention program may not be used to pay any tax or customs duty levied by the government of the Russian Federation. In

the event payment of such a tax or customs duty with such funds is unavoidable, the Secretary of Energy shall—

(A) after such payment, submit a report to the congressional defense committees explaining the particular circumstances making such payment under the Initiatives for Proliferation Prevention program with such funds unavoidable; and

(B) ensure that sufficient additional funds are provided to the Initiatives for Proliferation Prevention Program¹ to offset the amount of such payment.

(b) Nuclear Cities Initiative

(1) No amounts authorized to be appropriated by title XXXI of the National Defense Authorization Act for Fiscal Year 2000 (Public Law 106-65) for the Nuclear Cities Initiative may be obligated or expended for purposes of the initiative until the Secretary of Energy certifies to Congress that Russia has agreed to close some of its facilities engaged in work on weapons of mass destruction.

(2) Notwithstanding a certification under paragraph (1), amounts authorized to be appropriated by this title² for the Nuclear Cities Initiative may not be obligated or expended for purposes of providing assistance under the initiative to more than three nuclear cities, and more than two serial production facilities, in Russia in fiscal year 2000.

(3)(A) The Secretary shall conduct a study of the potential economic effects of each commercial program proposed under the Nuclear Cities Initiative before providing assistance for the conduct of the program. The study shall include an assessment regarding whether or not the mechanisms for job creation under each program are likely to lead to the creation of the jobs intended to be created by that program.

(B) If the Secretary determines as a result of the study that the intended commercial benefits of a program are not likely to be achieved, the Secretary may not provide assistance for the conduct of that program.

(4) Not later than January 1, 2000, the Secretary shall submit to Congress a report describing the participation in or contribution to the Nuclear Cities Initiative of each department and agency of the United States Government that participates in or contributes to the initiative. The report shall describe separately any inter-agency participation in or contribution to the initiative.

(c) Report

(1) Not later than January 1, 2000, the Secretary of Energy shall submit to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives a report on the Initiatives for Proliferation Prevention program and the Nuclear Cities Initiative.

(2) The report shall include the following:

(A) A strategic plan for the Initiatives for Proliferation Prevention program and for the Nuclear Cities Initiative, which shall establish objectives for the program or initiative, as the

¹ So in original. Initial letter probably should be lower case.

² See References in Text note below.

case may be, and means for measuring the achievement of such objectives.

(B) A list of the most successful projects under the Initiatives for Proliferation Prevention program, including for each such project the name of the institute and scientists who are participating or have participated in the project, the number of jobs created through the project, and the manner in which the project has met the nonproliferation objectives of the United States.

(C) A list of the institutes and scientists associated with weapons of mass destruction programs or other defense-related programs in the states of the former Soviet Union that the Department seeks to engage in commercial work under the Initiatives for Proliferation Prevention program or the Nuclear Cities Initiative, including—

(i) a description of the work performed by such institutes and scientists under such weapons of mass destruction programs or other defense-related programs; and

(ii) a description of any work proposed to be performed by such institutes and scientists under the Initiatives for Proliferation Prevention program or the Nuclear Cities Initiative.

(d) Nuclear Cities Initiative defined

For purposes of this section, the term “Nuclear Cities Initiative” means the initiative arising pursuant to the March 1998 discussions between the Vice President of the United States and the Prime Minister of the Russian Federation and between the Secretary of Energy of the United States and the Minister of Atomic Energy of the Russian Federation.

(Pub. L. 107-314, div. D, title XLIII, § 4302, formerly Pub. L. 106-65, div. C, title XXXI, § 3136, Oct. 5, 1999, 113 Stat. 927; renumbered Pub. L. 107-314, div. D, title XLIII, § 4302, and amended Pub. L. 108-136, div. C, title XXXI, § 3141(f)(3), Nov. 24, 2003, 117 Stat. 1762.)

REFERENCES IN TEXT

Title XXXI of the National Defense Authorization Act for Fiscal Year 2000, referred to in subsec. (b)(1), is title XXXI of div. C of Pub. L. 106-65, Oct. 5, 1999, 113 Stat. 914, as amended. For complete classification of title XXXI to the Code, see Tables.

This title, referred to in subsec. (b)(2), probably means title XXXI of Pub. L. 106-65. See above.

AMENDMENTS

2003—Subsec. (b)(1). Pub. L. 108-136, § 3141(f)(3)(D), substituted “title XXXI of the National Defense Authorization Act for Fiscal Year 2000 (Public Law 106-65)” for “this title”.

§ 2563. Annual report on status of Nuclear Materials Protection, Control, and Accounting Program

(a) Report required

Not later than January 1 of each year, the Secretary of Energy shall submit to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives a report on the status of efforts during the preceding fiscal year under the Nuclear Materials Protection, Control, and Ac-

counting Program of the Department of Energy to secure weapons-usable nuclear materials in countries where such materials have been identified as being at risk for theft or diversion.

(b) Contents

Each report under subsection (a) shall include the following:

(1) The number of buildings, including building locations, in each country covered by subsection (a) that received complete and integrated materials protection, control, and accounting systems for nuclear materials described in subsection (a) during the year covered by such report.

(2) The amounts of highly enriched uranium and plutonium in each such country that have been secured under systems described in paragraph (1) as of the date of such report.

(3) The amount of nuclear materials described in subsection (a) in each such country that continues to require securing under systems described in paragraph (1) as of the date of such report.

(4) A plan for actions to secure the nuclear materials identified in paragraph (3) under systems described in paragraph (1), including an estimate of the cost of such actions.

(5) The amounts expended through the fiscal year preceding the date of such report to secure nuclear materials described in subsection (a) under systems described in paragraph (1), set forth by total amount per country and by amount per fiscal year per country.

(c) Limitation on use of certain funds

(1) No amounts authorized to be appropriated for the Department of Energy by the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001 (as enacted into law by Public Law 106-398) or any other Act for purposes of the Nuclear Materials Protection, Control, and Accounting Program may be obligated or expended after September 30, 2000, for any project under the program at a site controlled by the Russian Ministry of Atomic Energy (MINATOM) in Russia until the Secretary submits to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives a report on the access policy established with respect to such project, including a certification that the access policy has been implemented.

(2) The access policy with respect to a project under this subsection shall—

(A) permit appropriate determinations by United States officials regarding security requirements, including security upgrades, for the project; and

(B) ensure verification by United States officials that Department of Energy assistance at the project is being used for the purposes intended.

(Pub. L. 107-314, div. D, title XLIII, § 4303, formerly Pub. L. 106-398, § 1 [div. C, title XXXI, § 3171], Oct. 30, 2000, 114 Stat. 1654, 1654A-475; Pub. L. 107-314, div. C, title XXXI, § 3153, Dec. 2, 2002, 116 Stat. 2738; renumbered Pub. L. 107-314, div. D, title XLIII, § 4303, and amended Pub. L. 108-136, div. C, title XXXI, § 3141(f)(4), Nov. 24, 2003, 117 Stat. 1763.)

REFERENCES IN TEXT

The Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001, referred to in subsec. (c)(1), is Pub. L. 106-398, § 1 [H.R. 5408], Oct. 30, 2000, 114 Stat. 1654, 1654A-1, as amended. For complete classification of this Act to the Code, see Tables.

CODIFICATION

Section was formerly set out as a note under section 5952 of Title 22, Foreign Relations and Intercourse, prior to renumbering by Pub. L. 108-136.

AMENDMENTS

2003—Subsec. (c)(1). Pub. L. 108-136, § 3141(f)(4)(D), substituted “the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001 (as enacted into law by Public Law 106-398)” for “this Act”.

2002—Subsec. (a). Pub. L. 107-314, § 3153(a), substituted “countries where such materials” for “Russia that”.

Subsec. (b)(1). Pub. L. 107-314, § 3153(b)(1), inserted “in each country covered by subsection (a)” after “locations”.

Subsec. (b)(2). Pub. L. 107-314, § 3153(b)(2), substituted “in each such country” for “in Russia”.

Subsec. (b)(3). Pub. L. 107-314, § 3153(b)(3), inserted “in each such country” after “subsection (a)”.

Subsec. (b)(5). Pub. L. 107-314, § 3153(b)(4), substituted “by total amount per country and by amount per fiscal year per country” for “by total amount and by amount per fiscal year”.

§ 2564. Nuclear Cities Initiative**(a) In general**

(1) The Secretary of Energy may, in accordance with the provisions of this section, expand and enhance the activities of the Department of Energy under the Nuclear Cities Initiative.

(2) In this section, the term “Nuclear Cities Initiative” means the initiative arising pursuant to the joint statement dated July 24, 1998, signed by the Vice President of the United States and the Prime Minister of the Russian Federation and the agreement dated September 22, 1998, between the United States and the Russian Federation.

(b) Funding for fiscal year 2001

There is hereby authorized to be appropriated for the Department of Energy for fiscal year 2001 \$30,000,000 for purposes of the Nuclear Cities Initiative.

(c) Limitation pending submission of agreement

No amount authorized to be appropriated or otherwise made available for the Department of Energy for fiscal year 2001 for the Nuclear Cities Initiative may be obligated or expended to provide assistance under the Initiative for more than three nuclear cities in Russia and two serial production facilities in Russia until 30 days after the date on which the Secretary of Energy submits to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives a copy of a written agreement between the United States Government and the Government of the Russian Federation which provides that Russia will close some of its facilities engaged in nuclear weapons assembly and disassembly work.

(d) Limitation pending implementation of project review procedures

(1) Not more than \$8,750,000 of the amounts referred to in subsection (b) may be obligated or

expended for purposes of the Initiative until the Secretary of Energy establishes and implements project review procedures for projects under the Initiative and submits to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives a report on the project review procedures so established and implemented.

(2) The project review procedures established under paragraph (1) shall ensure that any scientific, technical, or commercial project initiated under the Initiative—

(A) will not enhance the military or weapons of mass destruction capabilities of Russia;

(B) will not result in the inadvertent transfer or utilization of products or activities under such project for military purposes;

(C) will be commercially viable; and

(D) will be carried out in conjunction with an appropriate commercial, industrial, or non-profit entity as partner.

(e) Limitation pending certification and report

No amount in excess of \$17,500,000 authorized to be appropriated for the Department of Energy for fiscal year 2001 for the Nuclear Cities Initiative may be obligated or expended for purposes of providing assistance under the Initiative until 30 days after the date on which the Secretary of Energy submits to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives the following:

(1) A copy of the written agreement between the United States and the Russian Federation which provides that Russia will close some of its facilities engaged in nuclear weapons assembly and disassembly work within five years of the date of the agreement in exchange for receiving assistance through the Initiative.

(2) A certification by the Secretary—

(A) that project review procedures for all projects under the Initiative have been established and are being implemented; and

(B) that those procedures will ensure that any scientific, technical, or commercial project initiated under the Initiative—

(i) will not enhance the military or weapons of mass destruction capabilities of Russia;

(ii) will not result in the inadvertent transfer or utilization of products or activities under such project for military purposes;

(iii) will be commercially viable within three years after the date of the initiation of the project; and

(iv) will be carried out in conjunction with an appropriate commercial, industrial, or other nonprofit entity as partner.

(3) A report setting forth the following:

(A) A description of the project review procedures process.

(B) A list of the projects under the Initiative that have been reviewed under such project review procedures.

(C) A description for each project listed under subparagraph (B) of the purpose, expected life-cycle costs, out-year budget costs, participants, commercial viability, expected time for income generation, and number of Russian jobs created.

(f) Plan for restructuring the Russian nuclear complex

(1) The President, acting through the Secretary of Energy, is urged to enter into discussions with the Russian Federation for purposes of the development by the Russian Federation of a plan to restructure the Russian nuclear complex in order to meet changes in the national security requirements of Russia by 2010.

(2) The plan under paragraph (1) should include the following:

(A) Mechanisms to consolidate the nuclear weapons production capacity in Russia to a capacity that is consistent with the obligations of Russia under current and future arms control agreements.

(B) Mechanisms to increase transparency regarding the restructuring of the Russian nuclear complex and weapons-surplus nuclear materials inventories in Russia to the levels of transparency for such matters in the United States, including the participation of Department of Energy officials with expertise in transparency of such matters.

(C) Measurable milestones that will permit the United States and the Russian Federation to monitor progress under the plan.

(g) Encouragement of careers in nonproliferation

(1) In carrying out actions under this section, the Secretary of Energy may carry out a program to encourage students in the United States and in the Russian Federation to pursue careers in areas relating to nonproliferation.

(2) Of the amounts made available under the Initiative for fiscal year 2001 in excess of \$17,500,000, up to \$2,000,000 shall be available for purposes of the program under paragraph (1).

(3) The Administrator for Nuclear Security shall notify the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives before any funds are expended pursuant to paragraph (2). Any such notification shall include—

(A) an identification of the amount to be expended under paragraph (2) during fiscal year 2001;

(B) the recipients of the funds; and

(C) specific information on the activities that will be conducted using those funds.

(h) Definitions

In this section:

(1) The term “nuclear city” means any of the closed nuclear cities within the complex of the Russian Ministry of Atomic Energy as follows:

- (A) Sarov (Arzamas-16).
- (B) Zarechnyy (Penza-19).
- (C) Novoural’sk (Sverdlovsk-44).
- (D) Lesnoy (Sverdlovsk-45).
- (E) Ozersk (Chelyabinsk-65).
- (F) Snezhinsk (Chelyabinsk-70).
- (G) Trekhgornyy (Zlatoust-36).
- (H) Seversk (Tomsk-7).
- (I) Zheleznogorsk (Krasnoyarsk-26).
- (J) Zelenogorsk (Krasnoyarsk-45).

(2) The term “Russian nuclear complex” means all of the nuclear cities.

(3) The term “serial production facilities” means the facilities in Russia that are located at the following cities:

- (A) Avangard.
- (B) Lesnoy (Sverdlovsk-45).
- (C) Trekhgornyy (Zlatoust-36).
- (D) Zarechnyy (Penza-19).

(Pub. L. 107-314, div. D, title XLIII, § 4304, formerly Pub. L. 106-398, § 1 [div. C, title XXXI, § 3172], Oct. 30, 2000, 114 Stat. 1654, 1654A-476; renumbered Pub. L. 107-314, div. D, title XLIII, § 4304, by Pub. L. 108-136, div. C, title XXXI, § 3141(f)(5), Nov. 24, 2003, 117 Stat. 1763.)

§ 2565. Authority to conduct program relating to fissile materials

The Secretary of Energy may conduct programs designed to improve the protection, control, and accountability of fissile materials in Russia.

(Pub. L. 107-314, div. D, title XLIII, § 4305, formerly Pub. L. 104-106, div. C, title XXXI, § 3131, Feb. 10, 1996, 110 Stat. 617; Pub. L. 107-314, div. C, title XXXI, § 3152, Dec. 2, 2002, 116 Stat. 2738; renumbered Pub. L. 107-314, div. D, title XLIII, § 4305, by Pub. L. 108-136, div. C, title XXXI, § 3141(f)(6), Nov. 24, 2003, 117 Stat. 1763.)

CODIFICATION

Section was formerly set out as a note under section 5952 of Title 22, Foreign Relations and Intercourse, prior to renumbering by Pub. L. 108-136.

AMENDMENTS

2002—Pub. L. 107-314, § 3152, struck out subsec. (a) designation and heading “Authority” and subsec. (b) heading and text. Prior to amendment, subsec. (b) related to semi-annual reports on obligations of funds.

§ 2566. Disposition of weapons-usable plutonium at Savannah River Site

(a) Plan for construction and operation of MOX facility

(1) Not later than February 1, 2003, the Secretary of Energy shall submit to Congress a plan for the construction and operation of the MOX facility at the Savannah River Site, Aiken, South Carolina.

(2) The plan under paragraph (1) shall include—

(A) a schedule for construction and operations so as to achieve, as of January 1, 2009, and thereafter, the MOX production objective, and to produce 1 metric ton of mixed-oxide fuel by December 31, 2009; and

(B) a schedule of operations of the MOX facility designed so that 34 metric tons of defense plutonium and defense plutonium materials at the Savannah River Site will be processed into mixed-oxide fuel by January 1, 2019.

(3)(A) Not later than February 15 each year, beginning in 2004 and continuing for as long as the MOX facility is in use, the Secretary shall submit to Congress a report on the implementation of the plan required by paragraph (1).

(B) Each report under subparagraph (A) for years before 2010 shall include—

(i) an assessment of compliance with the schedules included with the plan under paragraph (2); and

(ii) a certification by the Secretary whether or not the MOX production objective can be met by January 2009.

(C) Each report under subparagraph (A) for years after 2009 shall—

- (i) address whether the MOX production objective has been met; and
- (ii) assess progress toward meeting the obligations of the United States under the Plutonium Management and Disposition Agreement.

(D) Each report under subparagraph (A) for years after 2017 shall also include an assessment of compliance with the MOX production objective and, if not in compliance, the plan of the Secretary for achieving one of the following:

- (i) Compliance with such objective.
- (ii) Removal of all remaining defense plutonium and defense plutonium materials from the State of South Carolina.

(b) Corrective actions

(1) If a report under subsection (a)(3) indicates that construction or operation of the MOX facility is behind the applicable schedule under subsection (a)(2) by 12 months or more, the Secretary shall submit to Congress, not later than August 15 of the year in which such report is submitted, a plan for corrective actions to be implemented by the Secretary to ensure that the MOX facility project is capable of meeting the MOX production objective by January 1, 2009.

(2) If a plan is submitted under paragraph (1) in any year after 2008, the plan shall include corrective actions to be implemented by the Secretary to ensure that the MOX production objective is met.

(3) Any plan for corrective actions under paragraph (1) or (2) shall include established milestones under such plan for achieving compliance with the MOX production objective.

(4) If, before January 1, 2009, the Secretary determines that there is a substantial and material risk that the MOX production objective will not be achieved by 2009 because of a failure to achieve milestones set forth in the most recent corrective action plan under this subsection, the Secretary shall suspend further transfers of defense plutonium and defense plutonium materials to be processed by the MOX facility until such risk is addressed and the Secretary certifies that the MOX production objective can be met by 2009.

(5) If, after January 1, 2009, the Secretary determines that the MOX production objective has not been achieved because of a failure to achieve milestones set forth in the most recent corrective action plan under this subsection, the Secretary shall suspend further transfers of defense plutonium and defense plutonium materials to be processed by the MOX facility until the Secretary certifies that the MOX production objective can be met.

(6)(A) Upon making a determination under paragraph (4) or (5), the Secretary shall submit to Congress a report on the options for removing from the State of South Carolina an amount of defense plutonium or defense plutonium materials equal to the amount of defense plutonium or defense plutonium materials transferred to the State of South Carolina after April 15, 2002.

(B) Each report under subparagraph (A) shall include an analysis of each option set forth in

the report, including the cost and schedule for implementation of such option, and any requirements under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) relating to consideration or selection of such option.

(C) Upon submittal of a report under paragraph (A), the Secretary shall commence any analysis that may be required under the National Environmental Policy Act of 1969 in order to select among the options set forth in the report.

(c) Contingent requirement for removal of plutonium and materials from Savannah River Site

If the MOX production objective is not achieved as of January 1, 2009, the Secretary shall, consistent with the National Environmental Policy Act of 1969 [42 U.S.C. 4321 et seq.] and other applicable laws, remove from the State of South Carolina, for storage or disposal elsewhere—

(1) not later than January 1, 2011, not less than 1 metric ton of defense plutonium or defense plutonium materials; and

(2) not later than January 1, 2017, an amount of defense plutonium or defense plutonium materials equal to the amount of defense plutonium or defense plutonium materials transferred to the Savannah River Site between April 15, 2002 and January 1, 2017, but not processed by the MOX facility.

(d) Economic and impact assistance

(1) If the MOX production objective is not achieved as of January 1, 2011, the Secretary shall, from funds available to the Secretary, pay to the State of South Carolina each year beginning on or after that date through 2016 for economic and impact assistance an amount equal to \$1,000,000 per day, not to exceed \$100,000,000 per year, until the later of—

(A) the date on which the MOX production objective is achieved in such year; or

(B) the date on which the Secretary has removed from the State of South Carolina in such year at least 1 metric ton of defense plutonium or defense plutonium materials.

(2)(A) If, as of January 1, 2017, the MOX facility has not processed mixed-oxide fuel from defense plutonium and defense plutonium materials in the amount of not less than—

(i) one metric ton, in each of any two consecutive calendar years; and

(ii) three metric tons total,

the Secretary shall, from funds available to the Secretary, pay to the State of South Carolina for economic and impact assistance an amount equal to \$1,000,000 per day, not to exceed \$100,000,000 per year, until the removal by the Secretary from the State of South Carolina of an amount of defense plutonium or defense plutonium materials equal to the amount of defense plutonium or defense plutonium materials transferred to the Savannah River Site between April 15, 2002, and January 1, 2017, but not processed by the MOX facility.

(B) Nothing in this paragraph may be construed to terminate, supersede, or otherwise affect any other requirements of this section.

(3) If the State of South Carolina obtains an injunction that prohibits the Department from

taking any action necessary for the Department to meet any deadline specified by this subsection, that deadline shall be extended for a period of time equal to the period of time during which the injunction is in effect.

(e) Failure to complete planned disposition program

If on July 1 each year beginning in 2020 and continuing for as long as the MOX facility is in use, less than 34 metric tons of defense plutonium or defense plutonium materials have been processed by the MOX facility, the Secretary shall submit to Congress a plan for—

(1) completing the processing of 34 metric tons of defense plutonium and defense plutonium material by the MOX facility; or

(2) removing from the State of South Carolina an amount of defense plutonium or defense plutonium materials equal to the amount of defense plutonium or defense plutonium materials transferred to the Savannah River Site after April 15, 2002, but not processed by the MOX facility.

(f) Removal of mixed-oxide fuel upon completion of operations of MOX facility

If, one year after the date on which operation of the MOX facility permanently ceases, any mixed-oxide fuel remains at the Savannah River Site, the Secretary shall submit to Congress—

(1) a report on when such fuel will be transferred for use in commercial nuclear reactors; or

(2) a plan for removing such fuel from the State of South Carolina.

(g) Definitions

In this section:

(1) MOX production objective

The term “MOX production objective” means production at the MOX facility of mixed-oxide fuel from defense plutonium and defense plutonium materials at an average rate equivalent to not less than one metric ton of mixed-oxide fuel per year. The average rate shall be determined by measuring production at the MOX facility from the date the facility is declared operational to the Nuclear Regulatory Commission through the date of assessment.

(2) MOX facility

The term “MOX facility” means the mixed-oxide fuel fabrication facility at the Savannah River Site, Aiken, South Carolina.

(3) Defense plutonium; defense plutonium materials

The terms “defense plutonium” and “defense plutonium materials” mean weapons-usable plutonium.

(Pub. L. 107–314, div. D, title XLIII, § 4306, formerly div. C, title XXXI, § 3182, Dec. 2, 2002, 116 Stat. 2747; renumbered div. D, title XLIII, § 4306, by Pub. L. 108–136, div. C, title XXXI, § 3141(f)(7)(A), Nov. 24, 2003, 117 Stat. 1763.)

REFERENCES IN TEXT

The National Environmental Policy Act of 1969, referred to in subsecs. (b)(6)(B), (C) and (c), is Pub. L. 91–190, Jan. 1, 1970, 83 Stat. 852, as amended, which is

classified generally to chapter 55 (§ 4321 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 4321 of Title 42 and Tables.

§ 2567. Disposition of surplus defense plutonium at Savannah River Site, Aiken, South Carolina

(a) Consultation required

The Secretary of Energy shall consult with the Governor of the State of South Carolina regarding any decisions or plans of the Secretary related to the disposition of surplus defense plutonium and defense plutonium materials located at the Savannah River Site, Aiken, South Carolina.

(b) Notice required

For each shipment of defense plutonium or defense plutonium materials to the Savannah River Site, the Secretary shall, not less than 30 days before the commencement of such shipment, submit to the congressional defense committees a report providing notice of such shipment.

(c) Plan for disposition

The Secretary shall prepare a plan for disposal of the surplus defense plutonium and defense plutonium materials currently located at the Savannah River Site and for disposal of defense plutonium and defense plutonium materials to be shipped to the Savannah River Site in the future. The plan shall include the following:

(1) A review of each option considered for such disposal.

(2) An identification of the preferred option for such disposal.

(3) With respect to the facilities for such disposal that are required by the Department of Energy’s Record of Decision for the Storage and Disposition of Weapons-Usable Fissile Materials Final Programmatic Environmental Impact Statement dated January 14, 1997—

(A) a statement of the cost of construction and operation of such facilities;

(B) a schedule for the expeditious construction of such facilities, including milestones; and

(C) a firm schedule for funding the cost of such facilities.

(4) A specification of the means by which all such defense plutonium and defense plutonium materials will be removed in a timely manner from the Savannah River Site for storage or disposal elsewhere.

(d) Plan for alternative disposition

If the Secretary determines not to proceed at the Savannah River Site with construction of the plutonium immobilization plant, or with the mixed oxide fuel fabrication facility, the Secretary shall prepare a plan that identifies a disposition path for all defense plutonium and defense plutonium materials that would otherwise have been disposed of at such plant or such facility, as applicable.

(e) Submission of plans

Not later than February 1, 2002, the Secretary shall submit to Congress the plan required by subsection (c) (and the plan prepared under subsection (d), if applicable).

(f) Limitation on plutonium shipments

If the Secretary does not submit to Congress the plan required by subsection (c) (and the plan prepared under subsection (d), if applicable) by February 1, 2002, the Secretary shall be prohibited from shipping defense plutonium or defense plutonium materials to the Savannah River Site during the period beginning on February 1, 2002, and ending on the date on which such plans are submitted to Congress.

(g) Rule of construction

Nothing in this section may be construed to prohibit or limit the Secretary from shipping defense plutonium or defense plutonium materials to sites other than the Savannah River Site during the period referred to in subsection (f) or any other period.

(h) Annual report on funding for fissile materials disposition activities

The Secretary shall include with the budget justification materials submitted to Congress in support of the Department of Energy budget for each fiscal year (as submitted with the budget of the President under section 1105(a) of title 31) a report setting forth the extent to which amounts requested for the Department for such fiscal year for fissile materials disposition activities will enable the Department to meet commitments for the disposition of surplus defense plutonium and defense plutonium materials located at the Savannah River Site, and for any other fissile materials disposition activities, in such fiscal year.

(Pub. L. 107-314, div. D, title XLIII, § 4306A, formerly Pub. L. 107-107, div. C, title XXXI, § 3155, Dec. 28, 2001, 115 Stat. 1378; renumbered Pub. L. 107-314, div. D, title XLIII, § 4306A, by Pub. L. 108-136, div. C, title XXXI, § 3141(f)(7)(B), Nov. 24, 2003, 117 Stat. 1763.)

§ 2568. Authority to use international nuclear materials protection and cooperation program funds outside the former Soviet Union**(a) Authority**

Subject to the provisions of this section, the President may obligate and expend international nuclear materials protection and cooperation program funds for a fiscal year, and any such funds for a fiscal year before such fiscal year that remain available for obligation, for a defense nuclear nonproliferation project or activity outside the states of the former Soviet Union that has not previously been authorized by Congress if the President determines each of the following:

(1) That such project or activity will—

(A)(i) assist the United States in the resolution of a critical emerging proliferation threat; or

(ii) permit the United States to take advantage of opportunities to achieve long-standing nonproliferation goals; and

(B) be completed in a short period of time.

(2) That the Department of Energy is the entity of the Federal Government that is most capable of carrying out such project or activity.

(b) Scope of authority

The authority in subsection (a) to obligate and expend funds for a project or activity includes authority to provide equipment, goods, and services for such project or activity utilizing such funds, but does not include authority to provide cash directly to such project or activity.

(c) Limitation on availability of funds

(1) The President may not obligate funds for a project or activity under the authority in subsection (a) until the President makes each determination specified in that subsection with respect to such project or activity.

(2) Not later than 10 days after obligating funds under the authority in subsection (a) for a project or activity, the President shall notify Congress in writing of the determinations made under paragraph (1) with respect to such project or activity, together with—

(A) a justification for such determinations; and

(B) a description of the scope and duration of such project or activity.

(d) Additional limitations and requirements

Except as otherwise provided in subsections (a) and (b), the exercise of the authority in subsection (a) shall be subject to any requirement or limitation under another provision of law as follows:

(1) Any requirement for prior notice or other reports to Congress on the use of international nuclear materials protection and cooperation program funds or on international nuclear materials protection and cooperation program projects or activities.

(2) Any limitation on the obligation or expenditure of international nuclear materials protection and cooperation program funds.

(3) Any limitation on international nuclear materials protection and cooperation program projects or activities.

(e) Funds

As used in this section, the term “international nuclear materials protection and cooperation program funds” means the funds appropriated pursuant to an authorization of appropriations for the International Nuclear Materials Protection and Cooperation Program.

(Pub. L. 108-136, div. C, title XXXI, § 3124, Nov. 24, 2003, 117 Stat. 1747; Pub. L. 108-375, div. C, title XXXI, § 3131, Oct. 28, 2004, 118 Stat. 2165.)

CODIFICATION

Section was enacted as part of the National Defense Authorization Act for Fiscal Year 2004, and not as part of the Atomic Energy Defense Act which comprises this chapter.

AMENDMENTS

2004—Subsec. (a). Pub. L. 108-375, § 3131(a), inserted “that has not previously been authorized by Congress” after “states of the former Soviet Union”.

Subsec. (c). Pub. L. 108-375, § 3131(b), redesignated subsec. (d) as (c) and struck out heading and text of former subsec. (c). Text read as follows: “The amount that may be obligated in a fiscal year under the authority in subsection (a) may not exceed \$50,000,000.”

Subsec. (d). Pub. L. 108-375, § 3131(b)(2), redesignated subsec. (e) as (d). Former subsec. (d) redesignated (c).

Subsec. (e). Pub. L. 108-375, § 3131(c), substituted “the funds appropriated pursuant to an authorization of ap-

propriations for the International Nuclear Materials Protection and Cooperation Program” for “the funds appropriated pursuant to the authorization of appropriations in section 3101(a)(2) for such program”.

Pub. L. 108-375, §3131(b)(2), redesignated subsec. (f) as (e). Former subsec. (e) redesignated (d).

Subsec. (f). Pub. L. 108-375, §3131(b)(2), redesignated subsec. (f) as (e).

§ 2569. Acceleration of removal or security of fissile materials, radiological materials, and related equipment at vulnerable sites worldwide

(a) Sense of Congress

(1) It is the sense of Congress that the security, including the rapid removal or secure storage, of high-risk, proliferation-attractive fissile materials, radiological materials, and related equipment at vulnerable sites worldwide should be a top priority among the activities to achieve the national security of the United States.

(2) It is the sense of Congress that the President may establish in the Department of Energy a task force to be known as the Task Force on Nuclear Materials to carry out the program authorized by subsection (b).

(b) Program authorized

The Secretary of Energy may carry out a program to undertake an accelerated, comprehensive worldwide effort to mitigate the threats posed by high-risk, proliferation-attractive fissile materials, radiological materials, and related equipment located at sites potentially vulnerable to theft or diversion.

(c) Program elements

(1) Activities under the program under subsection (b) may include the following:

(A) Accelerated efforts to secure, remove, or eliminate proliferation-attractive fissile materials or radiological materials in research reactors, other reactors, and other facilities worldwide.

(B) Arrangements for the secure shipment of proliferation-attractive fissile materials, radiological materials, and related equipment to other countries willing to accept such materials and equipment, or to the United States if such countries cannot be identified, and the provision of secure storage or disposition of such materials and equipment following shipment.

(C) The transportation of proliferation-attractive fissile materials, radiological materials, and related equipment from sites identified as proliferation risks to secure facilities in other countries or in the United States.

(D) The processing and packaging of proliferation-attractive fissile materials, radiological materials, and related equipment in accordance with required standards for transport, storage, and disposition.

(E) The provision of interim security upgrades for vulnerable, proliferation-attractive fissile materials, radiological materials, and related equipment pending their removal from their current sites.

(F) The utilization of funds to upgrade security and accounting at sites where proliferation-attractive fissile materials or radiological materials will remain for an extended

period of time in order to ensure that such materials are secure against plausible potential threats and will remain so in the future.

(G) The management of proliferation-attractive fissile materials, radiological materials, and related equipment at secure facilities.

(H) Actions to ensure that security, including security upgrades at sites and facilities for the storage or disposition of proliferation-attractive fissile materials, radiological materials, and related equipment, continues to function as intended.

(I) The provision of technical support to the International Atomic Energy Agency (IAEA), other countries, and other entities to facilitate removal of, and security upgrades to facilities that contain, proliferation-attractive fissile materials, radiological materials, and related equipment worldwide.

(J) The development of alternative fuels and irradiation targets based on low-enriched uranium to convert research or other reactors fueled by highly-enriched uranium to such alternative fuels, as well as the conversion of reactors and irradiation targets employing highly-enriched uranium to employment of such alternative fuels and targets.

(K) Accelerated actions for the blend down of highly-enriched uranium to low-enriched uranium.

(L) The provision of assistance in the closure and decommissioning of sites identified as presenting risks of proliferation of proliferation-attractive fissile materials, radiological materials, and related equipment.

(M) Programs to—

(i) assist in the placement of employees displaced as a result of actions pursuant to the program in enterprises not representing a proliferation threat; and

(ii) convert sites identified as presenting risks of proliferation regarding proliferation-attractive fissile materials, radiological materials, and related equipment to purposes not representing a proliferation threat to the extent necessary to eliminate the proliferation threat.

(2) The Secretary of Energy shall, in coordination with the Secretary of State, carry out the program in consultation with, and with the assistance of, appropriate departments, agencies, and other entities of the United States Government.

(3) The Secretary of Energy shall, with the concurrence of the Secretary of State, carry out activities under the program in collaboration with such foreign governments, non-governmental organizations, and other international entities as the Secretary of Energy considers appropriate for the program.

(d) Reports

(1) Not later than March 15, 2005, the Secretary of Energy shall submit to Congress a classified interim report on the program under subsection (b).

(2) Not later than January 1, 2006, the Secretary shall submit to Congress a classified final report on the program under subsection (b) that includes the following:

(A) A survey by the Secretary of the facilities and sites worldwide that contain pro-

liferation-attractive fissile materials, radiological materials, or related equipment.

(B) A list of sites determined by the Secretary to be of the highest priority, taking into account risk of theft from such sites, for removal or security of proliferation-attractive fissile materials, radiological materials, or related equipment, organized by level of priority.

(C) A plan, including activities under the program under this section, for the removal, security, or both of proliferation-attractive fissile materials, radiological materials, or related equipment at vulnerable facilities and sites worldwide, including measurable milestones, metrics, and estimated costs for the implementation of the plan.

(3) A summary of each report under this subsection shall also be submitted to Congress in unclassified form.

(e) Funding

Amounts authorized to be appropriated to the Secretary of Energy for defense nuclear nonproliferation activities shall be available for purposes of the program under this section.

(f) Definitions

In this section:

(1) The term “fissile materials” means plutonium, highly-enriched uranium, or other material capable of sustaining an explosive nuclear chain reaction, including irradiated items containing such materials if the radiation field from such items is not sufficient to prevent the theft or misuse of such items.

(2) The term “radiological materials” includes Americium-241, Californium-252, Cesium-137, Cobalt-60, Iridium-192, Plutonium-238, Radium-226, Strontium-90, Curium-244, and irradiated items containing such materials, or other materials designated by the Secretary of Energy for purposes of this paragraph.

(3) The term “related equipment” includes equipment useful for enrichment of uranium in the isotope 235 and for extraction of fissile materials from irradiated fuel rods and other equipment designated by the Secretary of Energy for purposes of this section.

(4) The term “highly-enriched uranium” means uranium enriched to or above 20 percent in the isotope 235.

(5) The term “low-enriched uranium” means uranium enriched below 20 percent in the isotope 235.

(6) The term “proliferation-attractive”, in the case of fissile materials and radiological materials, means quantities and types of such materials that are determined by the Secretary of Energy to present a significant risk to the national security of the United States if diverted to a use relating to proliferation.

(Pub. L. 108-375, div. C, title XXXI, § 3132, Oct. 28, 2004, 118 Stat. 2166.)

CODIFICATION

Section was enacted as part of the Ronald W. Reagan National Defense Authorization Act for Fiscal Year 2005, and not as part of the Atomic Energy Defense Act which comprises this chapter.

§ 2570. Silk Road Initiative

(a) Program authorized

(1) The Secretary of Energy may carry out a program, to be known as the Silk Road Initiative, to promote non-weapons-related employment opportunities for scientists, engineers, and technicians formerly engaged in activities to develop and produce weapons of mass destruction in Silk Road nations. The program should—

(A) incorporate best practices under the Initiatives for Proliferation Prevention program; and

(B) facilitate commercial partnerships between private entities in the United States and scientists, engineers, and technicians in the Silk Road nations.

(2) Before implementing the program with respect to multiple Silk Road nations, the Secretary of Energy shall carry out a pilot program with respect to one Silk Road nation selected by the Secretary. It is the sense of Congress that the Secretary should select the Republic of Georgia.

(b) Silk Road nations defined

In this section, the Silk Road nations are Armenia, Azerbaijan, the Republic of Georgia, Kazakhstan, Kyrgyzstan, Tajikistan, Turkmenistan, and Uzbekistan.

(c) Funding

Of the funds authorized to be appropriated to the Department of Energy for nonproliferation and international security for fiscal year 2005, up to \$10,000,000 may be used to carry out this section.

(Pub. L. 108-375, div. C, title XXXI, § 3133, Oct. 28, 2004, 118 Stat. 2168.)

CODIFICATION

Section was enacted as part of the Ronald W. Reagan National Defense Authorization Act for Fiscal Year 2005, and not as part of the Atomic Energy Defense Act which comprises this chapter.

§ 2571. Nuclear Nonproliferation Fellowships for scientists employed by United States and Russian Federation

(a) In general

(1) From amounts made available to carry out this section, the Administrator for Nuclear Security may carry out a program under which the Administrator awards, to scientists employed at nonproliferation research laboratories of the Russian Federation and the United States, international exchange fellowships, to be known as Nuclear Nonproliferation Fellowships, in the nuclear nonproliferation sciences.

(2) The purpose of the program shall be to provide opportunities for advancement in the nuclear nonproliferation sciences to scientists who, as demonstrated by their academic or professional achievements, show particular promise of making significant contributions in those sciences.

(3) A fellowship awarded to a scientist under the program shall be for collaborative study and training or advanced research at—

(A) a nonproliferation research laboratory of the Russian Federation, in the case of a sci-

entist employed at a nonproliferation research laboratory of the United States; and

(B) a nonproliferation research laboratory of the United States, in the case of a scientist employed at a nonproliferation research laboratory of the Russian Federation.

(4) The duration of a fellowship under the program may not exceed two years, except that the Administrator may provide for a longer duration in an individual case to the extent warranted by extraordinary circumstances, as determined by the Administrator.

(5) In a calendar year, the Administrator may not award more than—

(A) one fellowship to a scientist employed at a nonproliferation research laboratory of the Russian Federation; and

(B) one fellowship to a scientist employed at a nonproliferation research laboratory of the United States.

(6) A fellowship under the program shall include—

(A) travel expenses; and

(B) any other expenses that the Administrator considers appropriate, such as room and board.

(b) Definitions

In this section:

(1) The term “nonproliferation research laboratory” means, with respect to a country, a national laboratory of that country at which research in the nuclear nonproliferation sciences is carried out.

(2) The term “nuclear nonproliferation sciences” means bodies of scientific knowledge relevant to developing or advancing the means to prevent or impede the proliferation of nuclear weaponry.

(3) The term “scientist” means an individual who has a degree from an institution of higher education in a science that has practical application in the nuclear nonproliferation sciences.

(c) Funding

Amounts available to the Department of Energy for defense nuclear nonproliferation activities shall be available for the fellowships authorized by subsection (a).

(Pub. L. 108-375, div. C, title XXXI, § 3134, Oct. 28, 2004, 118 Stat. 2169.)

CODIFICATION

Section was enacted as part of the Ronald W. Reagan National Defense Authorization Act for Fiscal Year 2005, and not as part of the Atomic Energy Defense Act which comprises this chapter.

SUBCHAPTER IV—ENVIRONMENTAL RESTORATION AND WASTE MANAGEMENT MATTERS

PART A—ENVIRONMENTAL RESTORATION AND WASTE MANAGEMENT

§ 2581. Defense Environmental Restoration and Waste Management Account

(a) Establishment

There is hereby established in the Treasury of the United States for the Department of Energy

an account to be known as the “Defense Environmental Restoration and Waste Management Account” (hereafter in this section referred to as the “Account”).

(b) Amounts in Account

All sums appropriated to the Department of Energy for environmental restoration and waste management at defense nuclear facilities shall be credited to the Account. Such appropriations shall be authorized annually by law. To the extent provided in appropriations Acts, amounts in the Account shall remain available until expended.

(Pub. L. 107-314, div. D, title XLIV, § 4401, formerly Pub. L. 102-190, div. C, title XXXI, § 3134, Dec. 5, 1991, 105 Stat. 1575; renumbered Pub. L. 107-314, div. D, title XLIV, § 4401, by Pub. L. 108-136, div. C, title XXXI, § 3141(g)(2), Nov. 24, 2003, 117 Stat. 1764.)

CODIFICATION

Section was formerly classified to section 7274f of Title 42, The Public Health and Welfare, prior to renumbering by Pub. L. 108-136.

§ 2582. Requirement to develop future use plans for environmental management programs

(a) Authority to develop future use plans

The Secretary of Energy may develop future use plans for any defense nuclear facility at which environmental restoration and waste management activities are occurring.

(b) Requirement to develop future use plans

The Secretary shall develop a future use plan for each of the following defense nuclear facilities:

(1) Hanford Site, Richland, Washington.

(2) Rocky Flats Plant, Golden, Colorado.

(3) Savannah River Site, Aiken, South Carolina.

(4) Idaho National Engineering Laboratory, Idaho.

(c) Citizen advisory board

(1) At each defense nuclear facility for which the Secretary of Energy intends or is required to develop a future use plan under this section and for which no citizen advisory board has been established, the Secretary shall establish a citizen advisory board.

(2) The Secretary may authorize the manager of a defense nuclear facility for which a future use plan is developed under this section (or, if there is no such manager, an appropriate official of the Department of Energy designated by the Secretary) to pay routine administrative expenses of a citizen advisory board established for that facility. Such payments shall be made from funds available to the Secretary for program direction in carrying out environmental restoration and waste management activities necessary for national security programs.

(d) Requirement to consult with citizen advisory board

In developing a future use plan under this section with respect to a defense nuclear facility, the Secretary of Energy shall consult with a citizen advisory board established pursuant to subsection (c) or a similar advisory board already in

existence as of September 23, 1996, for such facility, affected local governments (including any local future use redevelopment authorities), and other appropriate State agencies.

(e) 50-year planning period

A future use plan developed under this section shall cover a period of at least 50 years.

(f) Deadlines

For each facility listed in subsection (b), the Secretary of Energy shall develop a draft future use plan by October 1, 1997, and a final future use plan by March 15, 1998.

(g) Report

Not later than 60 days after completing development of a final plan for a site listed in subsection (b), the Secretary of Energy shall submit to Congress a report on the plan. The report shall describe the plan and contain such findings and recommendations with respect to the site as the Secretary considers appropriate.

(h) Savings provisions

(1) Nothing in this section, or in a future use plan developed under this section with respect to a defense nuclear facility, shall be construed as requiring any modification to a future use plan with respect to a defense nuclear facility that was developed before September 23, 1996.

(2) Nothing in this section may be construed to affect statutory requirements for an environmental restoration or waste management activity or project or to modify or otherwise affect applicable statutory or regulatory environmental restoration and waste management requirements, including substantive standards intended to protect public health and the environment, nor shall anything in this section be construed to preempt or impair any local land use planning or zoning authority or State authority.

(Pub. L. 107-314, div. D, title XLIV, § 4402, formerly Pub. L. 104-201, div. C, title XXXI, § 3153, Sept. 23, 1996, 110 Stat. 2839; renumbered Pub. L. 107-314, div. D, title XLIV, § 4402, and amended Pub. L. 108-136, div. C, title XXXI, § 3141(g)(3), Nov. 24, 2003, 117 Stat. 1764.)

CODIFICATION

Section was formerly set out as a note under section 7274k of Title 42, The Public Health and Welfare, prior to renumbering by Pub. L. 108-136.

AMENDMENTS

2003—Subsec. (d). Pub. L. 108-136, § 3141(g)(3)(D)(i), substituted “September 23, 1996,” for “the date of the enactment of this Act”.

Subsec. (h)(1). Pub. L. 108-136, § 3141(g)(3)(D)(ii), substituted “September 23, 1996” for “the date of the enactment of this Act”.

§ 2583. Integrated fissile materials management plan

(a) Plan

The Secretary of Energy shall develop a long-term plan for the integrated management of fissile materials by the Department of Energy. The plan shall—

(1) identify means of coordinating or integrating the responsibilities of the Office of Environmental Management, the Office of Fissile

Materials Disposition, the Office of Nuclear Energy, and the Office of Defense Programs for the treatment, storage and disposition of fissile materials, and for the waste streams containing fissile materials, in order to achieve budgetary and other efficiencies in the discharge of those responsibilities; and

(2) identify any expenditures necessary at the sites that are anticipated to have an enduring mission for plutonium management in order to achieve the integrated management of fissile materials by the Department.

(b) Submittal to Congress

The Secretary shall submit the plan required by subsection (a) to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives not later than March 31, 2000.

(Pub. L. 107-314, div. D, title XLIV, § 4403, formerly Pub. L. 106-65, div. C, title XXXI, § 3172, Oct. 5, 1999, 113 Stat. 948; renumbered Pub. L. 107-314, div. D, title XLIV, § 4403, by Pub. L. 108-136, div. C, title XXXI, § 3141(g)(4), Nov. 24, 2003, 117 Stat. 1764.)

§ 2584. Baseline environmental management reports

(a) Annual environmental restoration reports

(1) The Secretary of Energy shall (in the years and at the times specified in paragraph (2)) submit to the Congress a report on the activities and projects necessary to carry out the environmental restoration of all Department of Energy defense nuclear facilities.

(2) Reports under paragraph (1) shall be submitted as follows:

(A) The initial report shall be submitted not later than March 1, 1995.

(B) A report after the initial report shall be submitted in each year after 1995 during which the Secretary of Energy conducts, or plans to conduct, environmental restoration activities and projects, not later than 30 days after the date on which the President submits to the Congress the budget for the fiscal year beginning in that year.

(b) Biennial waste management reports

(1) The Secretary of Energy shall (in the years and at the times specified in paragraph (2)) submit to the Congress a report on all activities and projects for waste management, including pollution prevention and transition of operational facilities to safe shutdown status, that are necessary for Department of Energy defense nuclear facilities.

(2) Reports required under paragraph (1) shall be submitted as follows:

(A) The initial report shall be submitted not later than June 1, 1995.

(B) A report after the initial report shall be submitted in each odd-numbered year after 1997, not later than 30 days after the date on which the President submits to the Congress the budget for the fiscal year beginning in that year.

(c) Contents of reports

A report required under subsection (a) or (b) shall be based on compliance with all applicable

provisions of law, permits, regulations, orders, and agreements, and shall—

(1) provide the estimated total cost of, and the complete schedule for, the activities and projects covered by the report;

(2) with respect to each such activity and project, contain—

(A) a description of the activity or project;

(B) a description of the problem addressed by the activity or project;

(C) the proposed remediation of the problem, if the remediation is known or decided;

(D) the estimated cost to complete the activity or project, including, where appropriate, the cost for every five-year increment;

(E) the estimated date for completion of the activity or project, including, where appropriate, progress milestones for every five-year increment; and

(F) a description of the personnel and facilities required to complete the activity or project; and

(3) contain a description of the research and development necessary to develop the technology to conduct the activities and projects covered by the report.

(d) Biennial status and variance reports

(1)(A) The Secretary of Energy shall (in the years and at the time specified in subparagraph (B)) submit to the Congress a status and variance report on environmental restoration and waste management activities and projects at Department of Energy defense nuclear facilities.

(B) A report under subparagraph (A) shall be submitted in 1995 and in each odd-numbered year thereafter during which the Secretary of Energy conducts environmental restoration and waste management activities, not later than 30 days after the date on which the President submits to the Congress the budget for the fiscal year beginning in that year.

(2) Each status and variance report under paragraph (1) shall contain the following:

(A) Information on each such activity and project for which funds were appropriated for the two fiscal years immediately before the fiscal year during which the report is submitted, including the following:

(i) Information on whether or not the activity or project has been completed, and information on the estimated date of completion for activities or projects that have not been completed.

(ii) The total amount of funds expended for the activity or project during such prior fiscal years, including the amount of funds expended from amounts made available as the result of supplemental appropriations or a transfer of funds, and an estimate of the total amount of funds required to complete the activity or project.

(iii) Information on whether the President requested an amount of funds for the activity or project in the budget for the fiscal year during which the report is submitted, and whether such funds were appropriated or transferred.

(iv) An explanation of the reasons for any projected cost variance between actual and

estimated expenditures of more than 15 percent or \$10,000,000, or any schedule delay of more than six months, for the activity or project.

(B) For the fiscal year during which the report is submitted, a disaggregation of the funds appropriated for Department of Energy defense environmental restoration and waste management into the activities and projects (including discrete parts of multiyear activities and projects) that the Secretary of Energy expects to accomplish during that fiscal year.

(C) For the fiscal year for which the budget is submitted, a disaggregation of the Department of Energy defense environmental restoration and waste management budget request into the activities and projects (including discrete parts of multiyear activities and projects) that the Secretary of Energy expects to accomplish during that fiscal year.

(e) Compliance tracking

In preparing a report under this section, the Secretary of Energy shall provide, with respect to each activity and project identified in the report, information which is sufficient to track the Department of Energy's compliance with relevant Federal and State regulatory milestones.

(f) Public participation in development of information

(1) The Secretary of Energy shall consult with the Administrator of the Environmental Protection Agency, the Attorney General, Governors and Attorneys General of affected States, appropriate representatives of affected Indian tribes, and interested members of the public in the development of information necessary to complete the reports required by subsections (a), (b), and (d).

(2) Consultation under paragraph (1) shall not interfere with the timely submission to Congress of the budget for a fiscal year.

(3) The Secretary may award grants to, and enter into cooperative agreements with, affected States and affected Indian tribes to facilitate the participation of such entities in the development of information under this subsection. The Secretary may also take appropriate action to facilitate the participation of interested members of the public in such development under this subsection.

(Pub. L. 107-314, div. D, title XLIV, § 4404, formerly Pub. L. 103-160, div. C, title XXXI, § 3153, Nov. 30, 1993, 107 Stat. 1950; Pub. L. 103-337, div. C, title XXXI, § 3160(b)-(d), Oct. 5, 1994, 108 Stat. 3094; Pub. L. 104-201, div. C, title XXXI, § 3152, Sept. 23, 1996, 110 Stat. 2839; Pub. L. 105-85, div. C, title XXXI, § 3160, Nov. 18, 1997, 111 Stat. 2048; renumbered Pub. L. 107-314, div. D, title XLIV, § 4404, by Pub. L. 108-136, div. C, title XXXI, § 3141(g)(5), Nov. 24, 2003, 117 Stat. 1765.)

CODIFICATION

Section was formerly classified to section 7274k of Title 42, The Public Health and Welfare, prior to renumbering by Pub. L. 108-136.

AMENDMENTS

1997—Subsec. (b)(2)(B). Pub. L. 105-85 substituted “1997” for “1995”.

1996—Subsec. (b). Pub. L. 104-201, § 3152(1), substituted “Biennial” for “Annual” in heading and “each odd-numbered year after 1995” for “each year after 1995” in par. (2)(B).

Subsec. (d). Pub. L. 104-201, § 3152(2), substituted “Biennial” for “Annual” in heading, “each odd-numbered year” for “each year” in par. (1)(B), “two fiscal years immediately” for “the fiscal year immediately” in introductory provisions of par. (2)(A), and “prior fiscal years” for “prior fiscal year” in par. (2)(A)(ii).

1994—Subsec. (b)(1). Pub. L. 103-337, § 3160(b), inserted “including pollution prevention and” after “waste management,” and struck out “and technology research and development related to such activities and projects” after “shutdown status.”

Subsec. (c)(2)(F). Pub. L. 103-337, § 3160(c)(2)–(4), added subpar. (F).

Subsec. (c)(3). Pub. L. 103-337, § 3160(c)(1), (5), added par. (3).

Subsec. (f). Pub. L. 103-337, § 3160(d), added subsec. (f).

§ 2585. Accelerated schedule for environmental restoration and waste management activities

(a) Accelerated cleanup

The Secretary of Energy shall accelerate the schedule for environmental restoration and waste management activities and projects for a site at a Department of Energy defense nuclear facility if the Secretary determines that such an accelerated schedule will achieve meaningful, long-term cost savings to the Federal Government and could substantially accelerate the release of land for local reuse.

(b) Consideration of factors

In making a determination under subsection (a), the Secretary shall consider the following:

- (1) The cost savings achievable by the Federal Government.
- (2) The amount of time for completion of environmental restoration and waste management activities and projects at the site that can be reduced from the time specified for completion of such activities and projects in the baseline environmental management report required to be submitted for 1995 under section 3153 of the National Defense Authorization Act for Fiscal Year 1994 (42 U.S.C. 7274k), the predecessor provision to section 2584 of this title.
- (3) The potential for reuse of the site.
- (4) The risks that the site poses to local health and safety.
- (5) The proximity of the site to populated areas.

(c) Report

Not later than May 1, 1996, the Secretary shall submit to Congress a report on each site for which the Secretary has accelerated the schedule for environmental restoration and waste management activities and projects under subsection (a). The report shall include an explanation of the basis for the determination for that site required by such subsection, including an explanation of the consideration of the factors described in subsection (b).

(d) Savings provision

Nothing in this section may be construed to affect a specific statutory requirement for a specific environmental restoration or waste management activity or project or to modify or otherwise affect applicable statutory or regulatory

environmental restoration and waste management requirements, including substantive standards intended to protect public health and the environment.

(Pub. L. 107-314, div. D, title XLIV, § 4405, formerly Pub. L. 104-106, div. C, title XXXI, § 3156, Feb. 10, 1996, 110 Stat. 625; renumbered Pub. L. 107-314, div. D, title XLIV, § 4405, and amended Pub. L. 108-136, div. C, title XXXI, § 3141(g)(6), Nov. 24, 2003, 117 Stat. 1765.)

REFERENCES IN TEXT

Section 3153 of the National Defense Authorization Act for Fiscal Year 1994, referred to in subsec. (b)(2), is section 3153 of Pub. L. 103-160, div. C, title XXXI, Nov. 30, 1993, 107 Stat. 1950, which was formerly classified to section 7274k of Title 42, The Public Health and Welfare, prior to renumbering and transfer to section 2584 of this title by Pub. L. 108-136.

CODIFICATION

Section was formerly set out as a note under section 7274k of Title 42, The Public Health and Welfare, prior to renumbering by Pub. L. 108-136.

AMENDMENTS

2003—Subsec. (b)(2). Pub. L. 108-136, § 3141(g)(6)(D), inserted “, the predecessor provision to section 2584 of this title” before period at end.

§ 2586. Defense waste cleanup technology program

(a) Establishment of program

The Secretary of Energy shall establish and carry out a program of research for the development of technologies useful for (1) the reduction of environmental hazards and contamination resulting from defense waste, and (2) environmental restoration of inactive defense waste disposal sites.

(b) Coordination of research activities

(1) In order to ensure nonduplication of research activities by the Department of Energy regarding technologies referred to in subsection (a), the Secretary shall coordinate the research activities of the Department of Energy relating to the development of such technologies with the research activities of the Environmental Protection Agency, the Department of Defense, and other appropriate Federal agencies relating to the same matter.

(2) To the extent that funds are otherwise available for obligation, the Secretary may enter into cooperative agreements with the Environmental Protection Agency, the Department of Defense, and other appropriate Federal agencies for the conduct of research for the development of technologies referred to in subsection (a).

(c) Definitions

As used in this section:

(1) The term “defense waste” means waste, including radioactive waste, resulting primarily from atomic energy defense activities of the Department of Energy.

(2) The term “inactive defense waste disposal site” means any site (including any facility) under the control or jurisdiction of the Secretary of Energy which is used for the disposal of defense waste and is closed to the dis-

posal of additional defense waste, including any site that is subject to decontamination and decommissioning.

(Pub. L. 107-314, div. D, title XLIV, §4406, formerly Pub. L. 101-189, div. C, title XXXI, §3141, Nov. 29, 1989, 103 Stat. 1679; Pub. L. 105-85, div. C, title XXXI, §3152(g), Nov. 18, 1997, 111 Stat. 2042; renumbered Pub. L. 107-314, div. D, title XLIV, §4406, and amended Pub. L. 108-136, div. C, title XXXI, §3141(g)(7), Nov. 24, 2003, 117 Stat. 1765.)

CODIFICATION

Section was formerly classified to section 7274a of Title 42, The Public Health and Welfare, prior to renumbering by Pub. L. 108-136.

AMENDMENTS

2003—Pub. L. 108-136, §3141(g)(7)(D), made technical amendment to section catchline.

1997—Subsecs. (c), (d). Pub. L. 105-85 redesignated subsec. (d) as (c) and struck out former subsec. (c) which required Secretary of Energy to submit to Congress not later than Apr. 1 each year a report on research activities of Department of Energy for development of technologies referred to in subsec. (a).

§ 2587. Report on environmental restoration expenditures

Each year, at the same time the President submits to Congress the budget for a fiscal year (pursuant to section 1105 of title 31), the Secretary of Energy shall submit to Congress a report on how the environmental restoration and waste management funds for defense activities of the Department of Energy were expended during the fiscal year preceding the fiscal year during which the budget is submitted. The report shall include details on expenditures by operations office, installation, budget category, and activity. The report also shall include any schedule changes or modifications to planned activities for the fiscal year in which the budget is submitted.

(Pub. L. 107-314, div. D, title XLIV, §4407, formerly Pub. L. 101-510, div. C, title XXXI, §3134, Nov. 5, 1990, 104 Stat. 1833; renumbered Pub. L. 107-314, div. D, title XLIV, §4407, and amended Pub. L. 108-136, div. C, title XXXI, §3141(g)(8), Nov. 24, 2003, 117 Stat. 1765.)

CODIFICATION

Section was formerly classified to section 7274c of Title 42, The Public Health and Welfare, prior to renumbering by Pub. L. 108-136.

AMENDMENTS

2003—Pub. L. 108-136, §3141(g)(8)(D), made technical amendment to section catchline.

§ 2588. Public participation in planning for environmental restoration and waste management at defense nuclear facilities

The Secretary of Energy shall consult with the Administrator of the Environmental Protection Agency, the Attorney General, Governors and Attorneys General of affected States, appropriate representatives of affected Indian tribes, and interested members of the public in any planning conducted by the Secretary for environmental restoration and waste management at Department of Energy defense nuclear facilities.

(Pub. L. 107-314, div. D, title XLIV, §4408, formerly Pub. L. 103-337, div. C, title XXXI, §3160(e), Oct. 5, 1994, 108 Stat. 3095; renumbered Pub. L. 107-314, div. D, title XLIV, §4408, and amended Pub. L. 108-136, div. C, title XXXI, §3141(g)(9), Nov. 24, 2003, 117 Stat. 1765.)

CODIFICATION

Section was formerly set out as a note under section 7274g of Title 42, The Public Health and Welfare, prior to renumbering by Pub. L. 108-136.

AMENDMENTS

2003—Pub. L. 108-136, §3141(g)(9)(C), substituted “Public participation in planning for environmental restoration and waste management at defense nuclear facilities” for “Public participation in planning” in section catchline.

§ 2589. Policy of Department of Energy regarding future defense environmental management matters

(a) Policy required

(1) Commencing not later than October 1, 2005, the Secretary of Energy shall have in effect a policy for carrying out future defense environmental management matters of the Department of Energy. The policy shall specify each officer within the Department with responsibilities for carrying out that policy and, for each such officer, the nature and extent of those responsibilities.

(2) In paragraph (1), the term “future defense environmental management matter” means any environmental cleanup project, decontamination and decommissioning project, waste management project, or related activity that arises out of the activities of the Department in carrying out programs necessary for national security and is to be commenced after November 24, 2003. However, such term does not include any such project or activity the responsibility for which has been assigned, as of November 24, 2003, to the Environmental Management program of the Department.

(b) Reflection in budget

For fiscal year 2006 and each fiscal year thereafter, the Secretary shall ensure that the budget justification materials submitted to Congress in support of the Department of Energy budget for such fiscal year (as submitted with the budget of the President under section 1105(a) of title 31) reflect the policy required by subsection (a).

(c) Consultation

The Secretary shall carry out this section in consultation with the Administrator for Nuclear Security and the Under Secretary of Energy for Energy, Science, and Environment.

(d) Report

The Secretary shall include with the budget justification materials submitted to Congress in support of the Department of Energy budget for fiscal year 2005 (as submitted with the budget of the President under section 1105(a) of title 31) a report on the policy that the Secretary plans to have in effect under subsection (a) as of October 1, 2005. The report shall specify the officers and responsibilities referred to in subsection (a).

(Pub. L. 108-136, div. C, title XXXI, §3132, Nov. 24, 2003, 117 Stat. 1750.)

CODIFICATION

Section was enacted as part of the National Defense Authorization Act for Fiscal Year 2004, and not as part of the Atomic Energy Defense Act which comprises this chapter.

PART B—CLOSURE OF FACILITIES

§ 2601. Projects to accelerate closure activities at defense nuclear facilities

(a) In general

The Secretary of Energy shall select and carry out closure-acceleration projects in accordance with this section.

(b) Purpose

The purpose of a closure-acceleration project shall be, within a fixed period of time, to clean up or decommission a Department of Energy defense nuclear facility or portion thereof and to make the facility safe by stabilizing, consolidating, treating, or removing nuclear materials from the facility in order to reduce significantly or eliminate future costs at the facility.

(c) Eligible projects

(1) The Secretary of Energy may establish a closure-acceleration project as eligible for selection under subsection (e) by—

(A) developing a plan for the project that meets the criteria under paragraph (2); and

(B) determining that the project will achieve significant long-term cost savings to the Federal Government from the baseline cost estimate made by the Department of Energy for the project.

(2) A plan for a closure-acceleration project under this section shall—

(A) define a clear, delineated scope of work for completion of the project;

(B) demonstrate that, with respect to the site of the proposed project, there is a regulatory agreement between the Department of Energy and other appropriate authorities for the implementation of environmental remediation requirements that would allow for successful completion of the project;

(C) demonstrate, to the maximum extent possible, the support of State and local elected officials and the public for the project;

(D) contain performance-based provisions to be included in the contract for the project, including—

(i) clearly stated and results-oriented performance criteria and measures;

(ii) appropriate incentives for the contractor to meet and exceed the performance criteria effectively and efficiently;

(iii) appropriate criteria and incentives for the contractor to seek and engage subcontractors who may more effectively and efficiently perform either unique and technologically challenging tasks or routine and interchangeable services;

(iv) specific incentives for cost savings;

(v) financial accountability; and

(vi) when appropriate, reduction of fee for failure to meet minimum performance criteria and standards;

(E) demonstrate that the project will use new and innovative cleanup and waste man-

agement technology with potential for application to other locations and facilities without requiring the development of new technologies; and

(F) demonstrate that the project can be completed within 10 years from the date of its selection.

(d) Program administration

The Secretary of Energy, acting through the Assistant Secretary for Environmental Management, shall implement a program to carry out the provisions of this section.

(e) Selection of projects

(1) The Secretary of Energy shall select closure-acceleration projects to be carried out under this section from among those projects established as eligible under subsection (c) that will result in the most significant long-term cost savings to the Government and the most significant reduction of imminent risk.

(2) For each project selected, the Secretary shall submit to Congress a report setting forth the reasons why the project was selected, based on the criteria under subsection (c)(2) and paragraph (1) of this subsection.

(f) Multiyear contracts

Notwithstanding section 254c(d) of title 41, the Secretary of Energy may enter into multiyear contracts to carry out projects selected under this section for up to 10 program years.

(g) Funding

(1) In the budget submitted to Congress under section 1105(a) of title 31 each year, the President shall set forth funds for carrying out closure-acceleration projects under this section as a separate item in the environmental restoration and waste management account of the Department of Energy budget.

(2) Funds appropriated for purposes of carrying out projects under this section shall remain available until expended.

(3) If a closure-acceleration project is being carried out at a defense nuclear facility with funds appropriated for such projects, the Secretary of Energy may not reduce the funds otherwise allocated to that defense nuclear facility for environmental restoration and waste management by reason of the funds being used for the project at that facility.

(4) Funds appropriated for purposes of carrying out projects under this section may not be used for an item for which Congress has specifically denied funds or for a new program or project that has not been authorized by Congress.

(h) Annual report

The Secretary of Energy shall submit each year to Congress a report on the status of each closure-acceleration project being carried out under this section. The report shall include, for each such project, the following:

(1) A description of the funding already provided for the project.

(2) A description of the extent of the cleanup, decommissioning, stabilization, consolidation, treatment, or removal activities completed.

(3) A comparison of the actual results of the project to the original proposal and the actual

cost of the project to the originally proposed cost.

(4) A description of the funding needed in future fiscal years for completion of the project.

(i) Duration of program

No closure-acceleration project selected under this section may be carried out after September 23, 2011.

(j) Savings provision

Nothing in this section may be construed to affect statutory requirements for an environmental restoration or waste management activity or project or to modify or otherwise affect applicable statutory or regulatory environmental restoration and waste management requirements, including substantive standards intended to protect public health and the environment, nor shall anything in this section be construed to preempt or impair any local land use planning or zoning authority or State authority.

(Pub. L. 107-314, div. D, title XLIV, §4421, formerly Pub. L. 104-201, div. C, title XXXI, §3143, Sept. 23, 1996, 110 Stat. 2836; renumbered Pub. L. 107-314, div. D, title XLIV, §4421, and amended Pub. L. 108-136, div. C, title XXXI, §3141(g)(11), Nov. 24, 2003, 117 Stat. 1766.)

CODIFICATION

Section was formerly classified to section 7274n of Title 42, The Public Health and Welfare, prior to renumbering by Pub. L. 108-136.

AMENDMENTS

2003—Subsec. (i). Pub. L. 108-136, §3141(g)(11)(D), substituted “September 23, 2011” for “the expiration of the 15-year period beginning on September 23, 1996”.

DEFENSE SITE ACCELERATION COMPLETION

Pub. L. 108-375, div. C, title XXXI, §3116, Oct. 28, 2004, 118 Stat. 2162, provided that:

“(a) IN GENERAL.—Notwithstanding the provisions of the Nuclear Waste Policy Act of 1982 [42 U.S.C. 10101 et seq.], the requirements of section 202 of the Energy Reorganization Act of 1974 [42 U.S.C. 5842], and other laws that define classes of radioactive waste, with respect to material stored at a Department of Energy site at which activities are regulated by a covered State pursuant to approved closure plans or permits issued by the State, the term ‘high-level radioactive waste’ does not include radioactive waste resulting from the reprocessing of spent nuclear fuel that the Secretary of Energy (in this section referred to as the ‘Secretary’), in consultation with the Nuclear Regulatory Commission (in this section referred to as the ‘Commission’), determines—

“(1) does not require permanent isolation in a deep geologic repository for spent fuel or high-level radioactive waste;

“(2) has had highly radioactive radionuclides removed to the maximum extent practical; and

“(3)(A) does not exceed concentration limits for Class C low-level waste as set out in section 61.55 of title 10, Code of Federal Regulations, and will be disposed of—

“(i) in compliance with the performance objectives set out in subpart C of part 61 of title 10, Code of Federal Regulations; and

“(ii) pursuant to a State-approved closure plan or State-issued permit, authority for the approval or issuance of which is conferred on the State outside of this section; or

“(B) exceeds concentration limits for Class C low-level waste as set out in section 61.55 of title 10, Code of Federal Regulations, but will be disposed of—

“(i) in compliance with the performance objectives set out in subpart C of part 61 of title 10, Code of Federal Regulations;

“(ii) pursuant to a State-approved closure plan or State-issued permit, authority for the approval or issuance of which is conferred on the State outside of this section; and

“(iii) pursuant to plans developed by the Secretary in consultation with the Commission.

“(b) MONITORING BY NUCLEAR REGULATORY COMMISSION.—(1) The Commission shall, in coordination with the covered State, monitor disposal actions taken by the Department of Energy pursuant to subparagraphs (A) and (B) of subsection (a)(3) for the purpose of assessing compliance with the performance objectives set out in subpart C of part 61 of title 10, Code of Federal Regulations.

“(2) If the Commission considers any disposal actions taken by the Department of Energy pursuant to those subparagraphs to be not in compliance with those performance objectives, the Commission shall, as soon as practicable after discovery of the noncompliant conditions, inform the Department of Energy, the covered State, and the following congressional committees:

“(A) The Committee on Armed Services, the Committee on Energy and Commerce, and the Committee on Appropriations of the House of Representatives.

“(B) The Committee on Armed Services, the Committee on Energy and Natural Resources, the Committee on Environment and Public Works, and the Committee on Appropriations of the Senate.

“(3) For fiscal year 2005, the Secretary shall, from amounts available for defense site acceleration completion, reimburse the Commission for all expenses, including salaries, that the Commission incurs as a result of performance under subsection (a) and this subsection for fiscal year 2005. The Department of Energy and the Commission may enter into an interagency agreement that specifies the method of reimbursement. Amounts received by the Commission for performance under subsection (a) and this subsection may be retained and used for salaries and expenses associated with those activities, notwithstanding section 3302 of title 31, United States Code, and shall remain available until expended.

“(4) For fiscal years after 2005, the Commission shall include in the budget justification materials submitted to Congress in support of the Commission budget for that fiscal year (as submitted with the budget of the President under section 1105(a) of title 31, United States Code) the amounts required, not offset by revenues, for performance under subsection (a) and this subsection.

“(c) INAPPLICABILITY TO CERTAIN MATERIALS.—Subsection (a) shall not apply to any material otherwise covered by that subsection that is transported from the covered State.

“(d) COVERED STATES.—For purposes of this section, the following States are covered States:

“(1) The State of South Carolina.

“(2) The State of Idaho.

“(e) CONSTRUCTION.—(1) Nothing in this section shall impair, alter, or modify the full implementation of any Federal Facility Agreement and Consent Order or other applicable consent decree for a Department of Energy site.

“(2) Nothing in this section establishes any precedent or is binding on the State of Washington, the State of Oregon, or any other State not covered by subsection (d) for the management, storage, treatment, and disposition of radioactive and hazardous materials.

“(3) Nothing in this section amends the definition of ‘transuranic waste’ or regulations for repository disposal of transuranic waste pursuant to the Waste Isolation Pilot Plant Land Withdrawal Act [Pub. L. 102-579, 106 Stat. 4777] or part 191 of title 40, Code of Federal Regulations.

“(4) Nothing in this section shall be construed to affect in any way the obligations of the Department of Energy to comply with section 4306A of the Atomic Energy Defense Act (50 U.S.C. 2567).

“(5) Nothing in this section amends the West Valley Demonstration Act [Pub. L. 96-368] (42 U.S.C. 2121a [2021a] note).

“(f) JUDICIAL REVIEW.—Judicial review shall be available in accordance with chapter 7 of title 5, United States Code, for the following:

“(1) Any determination made by the Secretary or any other agency action taken by the Secretary pursuant to this section.

“(2) Any failure of the Commission to carry out its responsibilities under subsection (b).”

SANDIA NATIONAL LABORATORIES

Pub. L. 108-199, div. H, §127, Jan. 23, 2004, 118 Stat. 440, provided that: “Funds appropriated in this, or any other Act hereafter, may not be obligated to pay, on behalf of the United States or a contractor or subcontractor of the United States, to post a bond or fulfill any other financial responsibility requirement relating to closure or post-closure care and monitoring of Sandia National Laboratories and properties held or managed by Sandia National Laboratories prior to implementation of closure or post-closure monitoring. The State of New Mexico or any other entity may not enforce against the United States or a contractor or subcontractor of the United States, in this year or any other fiscal year, a requirement to post bond or any other financial responsibility requirement relating to closure or post-closure care and monitoring of Sandia National Laboratories in New Mexico and properties held or managed by Sandia National Laboratories in New Mexico.”

§ 2602. Reports in connection with permanent closures of Department of Energy defense nuclear facilities

(a) Training and job placement services plan

Not later than 120 days before a Department of Energy defense nuclear facility (as defined in section 2286g of title 42) permanently ceases all production and processing operations, the Secretary of Energy must submit to the Committees on Armed Services of the Senate and the House of Representatives a report containing a discussion of the training and job placement services needed to enable the employees at such facility to obtain employment in the environmental remediation and cleanup activities at such facility. The discussion shall include the actions that should be taken by the contractor operating and managing such facility to provide retraining and job placement services to employees of such contractor.

(b) Closure report

Upon the permanent cessation of production operations at a Department of Energy defense nuclear facility, the Secretary of Energy shall submit to Congress a report containing—

(1) a complete survey of environmental problems at the facility;

(2) budget quality data indicating the cost of environmental restoration and other remediation and cleanup efforts at the facility; and

(3) a discussion of the proposed cleanup schedule.

(Pub. L. 107-314, div. D, title XLIV, §4422, formerly Pub. L. 101-189, div. C, title XXXI, §3156, Nov. 29, 1989, 103 Stat. 1683; renumbered Pub. L. 107-314, div. D, title XLIV, §4422, and amended Pub. L. 108-136, div. C, title XXXI, §3141(g)(12), Nov. 24, 2003, 117 Stat. 1766.)

CODIFICATION

Section was formerly classified to section 7274b of Title 42, The Public Health and Welfare, prior to renumbering by Pub. L. 108-136.

AMENDMENTS

2003—Pub. L. 108-136, §3141(g)(12)(D), made technical amendment to section catchline.

PART C—PRIVATIZATION

§ 2611. Defense environmental management privatization projects

(a) Authority to enter into contracts

The Secretary of Energy may, using funds authorized to be appropriated by section 3102(i) of the National Defense Authorization Act for Fiscal Year 1998 (Public Law 105-85) for a project referred to in that section, enter into a contract that—

(1) is awarded on a competitive basis;

(2) requires the contractor to construct or acquire any equipment or facilities required to carry out the contract;

(3) requires the contractor to bear any of the costs of the construction, acquisition, and operation of such equipment or facilities that arise before the commencement of the provision of goods or services under the contract; and

(4) provides for payment to the contractor under the contract only upon the meeting of performance specifications in the contract.

(b) Notice and wait

(1) The Secretary may not enter into a contract under subsection (a), exercise an authorization to proceed with such a contract or extend any contract period for such a contract by more than one year until 30 days after the date on which the Secretary submits to the congressional defense committees a report with respect to the contract.

(2) Except as provided in paragraph (3), a report under paragraph (1) with respect to a contract shall set forth—

(A) the anticipated costs and fees of the Department under the contract, including the anticipated maximum amount of such costs and fees;

(B) any performance specifications in the contract;

(C) the anticipated dates of commencement and completion of the provision of goods or services under the contract;

(D) the allocation between the Department and the contractor of any financial, regulatory, or environmental obligations under the contract;

(E) any activities planned or anticipated to be required with respect to the project after completion of the contract;

(F) the site services or other support to be provided the contractor by the Department under the contract;

(G) the goods or services to be provided by the Department or contractor under the contract, including any additional obligations to be borne by the Department or contractor with respect to such goods or services;

(H) if the contract provides for financing of the project by an entity or entities other than

the United States, a detailed comparison of the costs of financing the project through such entity or entities with the costs of financing the project by the United States;

(I) the schedule for the contract;

(J) the costs the Department would otherwise have incurred in obtaining the goods or services covered by the contract if the Department had not proposed to obtain the goods or services under this section;

(K) an estimate and justification of the cost savings, if any, to be realized through the contract, including the assumptions underlying the estimate;

(L) the effect of the contract on any ancillary schedules applicable to the facility concerned, including milestones in site compliance agreements; and

(M) the plans for maintaining financial and programmatic accountability for activities under the contract.

(3) In the case of a contract under subsection (a) at the Hanford Reservation, the report under paragraph (1) shall set forth—

(A) the matters specified in paragraph (2); and

(B) if the contract contemplates two pilot vitrification plants—

(i) an analysis of the basis for the selection of each of the plants in lieu of a single pilot vitrification plant; and

(ii) a detailed comparison of the costs to the United States of two pilot plants with the costs to the United States of a single pilot plant.

(c) Cost variations

(1)(A) The Secretary may not enter into a contract for a project referred to in subparagraph (B), or obligate funds attributable to the capital portion of the cost of such a contract, whenever the current estimated cost of the project exceeds the amount of the estimated cost of the project as shown in the most recent budget justification data submitted to Congress.

(B) Subparagraph (A) applies to the following:

(i) A project authorized by section 3102(i) of the National Defense Authorization Act for Fiscal Year 1998 (Public Law 105-85).

(ii) A project authorized by section 3103 of the National Defense Authorization Act for Fiscal Year 1997 (Public Law 104-201; 110 Stat. 2824) for which a contract has not been entered into as of November 18, 1997.

(2) The Secretary may not obligate funds attributable to the capital portion of the cost of a contract entered into before such date for a project authorized by such section 3103 whenever the current estimated cost of the project equals or exceeds 110 percent of the amount of the estimated cost of the project as shown in the most recent budget justification data submitted to Congress.

(d) Use of funds for termination of contract

Not later than 15 days before the Secretary obligates funds available for a project authorized by section 3102(i) of the National Defense Authorization Act for Fiscal Year 1998 (Public Law 105-85) to terminate the contract for the project under subsection (a), the Secretary shall notify

the congressional defense committees of the Secretary's intent to obligate the funds for that purpose.

(e) Annual report on contracts

(1) Not later than February 28 of each year, the Secretary shall submit to the congressional defense committees a report on the activities, if any, carried out under each contract referred to in paragraph (2) during the preceding year. The report shall include an update with respect to each such contract of the matters specified under subsection (b)(1) as of the date of the report.

(2) A contract referred to in paragraph (1) is the following:

(A) A contract under subsection (a) for a project referred to in that subsection.

(B) A contract under section 3103 of the National Defense Authorization Act for Fiscal Year 1997.

(f) Assessment of contracting without sufficient appropriations

Not later than 90 days after November 18, 1997, the Secretary shall submit to the congressional defense committees a report assessing whether, and under what circumstances, the Secretary could enter into contracts for defense environmental management privatization projects in the absence of sufficient appropriations to meet obligations under such contracts without thereby violating the provisions of section 1341 of title 31.

(Pub. L. 107-314, div. D, title XLIV, §4431, formerly Pub. L. 105-85, div. C, title XXXI, §3132, Nov. 18, 1997, 111 Stat. 2034; renumbered Pub. L. 107-314, div. D, title XLIV, §4431, and amended Pub. L. 108-136, div. C, title XXXI, §3141(g)(14), Nov. 24, 2003, 117 Stat. 1767.)

REFERENCES IN TEXT

Section 3102(i) of the National Defense Authorization Act for Fiscal Year 1998, referred to in subsecs. (a), (c)(1)(B)(i), and (d), is section 3102(i) of Pub. L. 105-85, div. C, title XXXI, Nov. 18, 1997, 111 Stat. 2028, which is not classified to the Code.

Section 3103 of the National Defense Authorization Act for Fiscal Year 1997, referred to in subsecs. (c)(1)(B)(ii), (2) and (e)(2)(B), is section 3103 of Pub. L. 104-201, div. C, title XXXI, Sept. 23, 1996, 110 Stat. 2824, which is not classified to the Code.

AMENDMENTS

2003—Subsecs. (a), (c)(1)(B)(i). Pub. L. 108-136, §3141(g)(14)(D)(i), inserted “of the National Defense Authorization Act for Fiscal Year 1998 (Public Law 105-85)” after “section 3102(i)”.

Subsec. (c)(1)(B)(ii). Pub. L. 108-136, §3141(g)(14)(D)(ii), substituted “November 18, 1997” for “the date of enactment of this Act”.

Subsec. (d). Pub. L. 108-136, §3141(g)(14)(D)(i), inserted “of the National Defense Authorization Act for Fiscal Year 1998 (Public Law 105-85)” after “section 3102(i)”.

Subsec. (f). Pub. L. 108-136, §3141(g)(14)(D)(ii), substituted “November 18, 1997” for “the date of enactment of this Act”.

PART D—HANFORD RESERVATION, WASHINGTON

§ 2621. Safety measures for waste tanks at Hanford Nuclear Reservation

(a) Identification and monitoring of tanks

Not later than February 3, 1991, the Secretary of Energy shall identify which single-shelled or

double-shelled high-level nuclear waste tanks at the Hanford Nuclear Reservation, Richland, Washington, may have a serious potential for release of high-level waste due to uncontrolled increases in temperature or pressure. After completing such identification, the Secretary shall determine whether continuous monitoring is being carried out to detect a release or excessive temperature or pressure at each tank so identified. If such monitoring is not being carried out, as soon as practicable the Secretary shall install such monitoring, but only if a type of monitoring that does not itself increase the danger of a release can be installed.

(b) Action plans

Not later than March 5, 1991, the Secretary of Energy shall develop action plans to respond to excessive temperature or pressure or a release from any tank identified under subsection (a).

(c) Prohibition

Beginning March 5, 1991, no additional high-level nuclear waste (except for small amounts removed and returned to a tank for analysis) may be added to a tank identified under subsection (a) unless the Secretary determines that no safer alternative than adding such waste to the tank currently exists or that the tank does not pose a serious potential for release of high-level nuclear waste.

(d) Report

Not later than May 5, 1991, the Secretary shall submit to Congress a report on actions taken to promote tank safety, including actions taken pursuant to this section, and the Secretary's timetable for resolving outstanding issues on how to handle the waste in such tanks.

(Pub. L. 107-314, div. D, title XLIV, §4441, formerly Pub. L. 101-510, div. C, title XXXI, §3137, Nov. 5, 1990, 104 Stat. 1833; renumbered Pub. L. 107-314, div. D, title XLIV, §4441, and amended Pub. L. 108-136, div. C, title XXXI, §3141(g)(16), Nov. 24, 2003, 117 Stat. 1767.)

AMENDMENTS

2003—Pub. L. 108-136, §3141(g)(16)(D)(i), made technical amendment to section catchline.

Subsec. (a). Pub. L. 108-136, §3141(g)(16)(D)(ii), substituted “Not later than February 3, 1991,” for “Within 90 days after the date of the enactment of this Act.”

Subsec. (b). Pub. L. 108-136, §3141(g)(16)(D)(iii), substituted “Not later than March 5, 1991,” for “Within 120 days after the date of the enactment of this Act.”

Subsec. (c). Pub. L. 108-136, §3141(g)(16)(D)(iv), substituted “Beginning March 5, 1991,” for “Beginning 120 days after the date of the enactment of this Act.”

Subsec. (d). Pub. L. 108-136, §3141(g)(16)(D)(v), substituted “Not later than May 5, 1991,” for “Within six months after the date of the enactment of this Act.”

§ 2622. Hanford waste tank cleanup program reforms

(a) Establishment of Office of River Protection

The Secretary of Energy shall establish an office at the Hanford Reservation, Richland, Washington, to be known as the “Office of River Protection” (in this section referred to as the “Office”).

(b) Management and responsibilities of Office

(1) The Office shall be headed by a senior official of the Department of Energy, who shall re-

port to the Assistant Secretary of Energy for Environmental Management.

(2) The head of the Office shall be responsible for managing, consistent with the policy direction established by the Department, all aspects of the River Protection Project, Richland, Washington.

(3)(A) The Assistant Secretary of Energy for Environmental Management shall delegate in writing responsibility for the management of the River Protection Project, Richland, Washington, to the head of the Office.

(B) Such delegation shall include, at a minimum, authorities for contracting, financial management, safety, and general program management that are equivalent to the authorities of managers of other operations offices of the Department of Energy.

(C) The head of the Office shall, to the maximum extent possible, coordinate all activities of the Office with the manager of the Richland Operations Office of the Department of Energy.

(c) Department responsibilities

The Secretary shall provide the head of the Office with the resources and personnel necessary to carry out the responsibilities specified in subsection (b)(2).

(d) Report

The Assistant Secretary of Energy for Environmental Management shall submit to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives, not later than November 29, 2000, a copy of the delegation of authority required by subsection (b)(3).

(e) Report

Not later than 2 years after the commencement of operations of the Office, the Secretary shall submit to the committees referred to in subsection (d) a report describing—

(1) any progress in or resulting from the utilization of the Tank Waste Remediation System; and

(2) any improvements in the management structure of the Department at Hanford with respect to the Tank Waste Remediation System as a result of the Office.

(f) Termination

(1) The Office shall terminate on the later to occur of the following dates:

(A) September 30, 2010.

(B) The date on which the Assistant Secretary of Energy for Environmental Management determines, in consultation with the head of the Office, that continuation of the Office is no longer necessary to carry out the responsibilities of the Department of Energy under the Tri-Party Agreement.

(2) The Assistant Secretary shall notify, in writing, the committees referred to in subsection (d) of a determination under paragraph (1).

(3) In this subsection, the term “Tri-Party Agreement” means the Hanford Federal Facility Agreement and Consent Order entered into among the Department of Energy, the Environmental Protection Agency, and the State of Washington Department of Ecology.

(Pub. L. 107-314, div. D, title XLIV, §4442, formerly Pub. L. 105-261, div. C, title XXXI, §3139, Oct. 17, 1998, 112 Stat. 2250; Pub. L. 106-398, §1 [div. C, title XXXI, §3141(b)-(d)], Oct. 30, 2000, 114 Stat. 1654, 1654A-463; Pub. L. 107-107, div. C, title XXXI, §3135, Dec. 28, 2001, 115 Stat. 1368; renumbered Pub. L. 107-314, div. D, title XLIV, §4442, and amended Pub. L. 108-136, div. C, title XXXI, §3141(g)(17), Nov. 24, 2003, 117 Stat. 1767.)

AMENDMENTS

2003—Subsec. (d). Pub. L. 108-136, §3141(g)(17)(D), substituted “November 29, 2000,” for “30 days after the date of the enactment of the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001.”

2001—Subsec. (f). Pub. L. 107-107 amended heading and text of subsec. (f) generally. Prior to amendment, text read as follows:

“(1) The Office shall terminate 5 years after the commencement of operations under this section unless the Secretary determines that termination on that date would disrupt effective management of the Hanford Tank Farm operations.

“(2) The Secretary shall notify, in writing, the committees referred to in subsection (d) of a determination under paragraph (1).”

2000—Subsec. (b). Pub. L. 106-398, §1 [div. C, title XXXI, §3141(b)], substituted “managing, consistent with the policy direction established by the Department, all aspects of the River Protection Project, Richland, Washington” for “managing all aspects of the Tank Waste Remediation System (also referred to as the Hanford Tank Farm operations), including those portions under privatization contracts, of the Department of Energy at Hanford” in par. (2) and added par. (3).

Subsec. (c). Pub. L. 106-398, §1 [div. C, title XXXI, §3141(c)], substituted “head” for “manager” and “to carry out the responsibilities specified in subsection (b)(2)” for “to manage the tank waste privatization program at Hanford in an efficient and streamlined manner”.

Subsec. (d). Pub. L. 106-398, §1 [div. C, title XXXI, §3141(d)], amended heading and text of subsec. (d) generally. Prior to amendment, text read as follows: “Not later than 90 days after the date of the enactment of this Act, the Secretary shall submit to the Committee on Armed Services of the Senate and the Committees on Commerce and on National Security of the House of Representatives an integrated management plan for all aspects of the Hanford Tank Farm operations, including the roles, responsibilities, and reporting relationships of the Office.”

§ 2623. River Protection Project

The tank waste remediation system environmental project, Richland, Washington, including all programs relating to the retrieval and treatment of tank waste at the site at Hanford, Washington, under the management of the Office of River Protection, shall be known and designated as the “River Protection Project”. Any reference to that project in any law, regulation, map, document, record, or other paper of the United States shall be considered to be a reference to the River Protection Project.

(Pub. L. 107-314, div. D, title XLIV, §4443, formerly Pub. L. 106-398, §1 [div. C, title XXXI, §3141(a)], Oct. 30, 2000, 114 Stat. 1654, 1654A-462; renumbered Pub. L. 107-314, div. D, title XLIV, §4443, and amended Pub. L. 108-136, div. C, title XXXI, §3141(g)(18), Nov. 24, 2003, 117 Stat. 1768.)

AMENDMENTS

2003—Pub. L. 108-136, §3141(g)(18)(C), inserted section catchline and struck out former subsec. heading.

§ 2624. Funding for termination costs of River Protection Project, Richland, Washington

The Secretary of Energy may not use appropriated funds to establish a reserve for the payment of any costs of termination of any contract relating to the River Protection Project, Richland, Washington (as designated by section 2623 of this title), that is terminated after October 30, 2000. Such costs may be paid from—

(1) appropriations originally available for the performance of the contract concerned;

(2) appropriations currently available for privatization initiatives in carrying out environmental restoration and waste management activities necessary for national security programs, and not otherwise obligated; or

(3) funds appropriated specifically for the payment of such costs.

(Pub. L. 107-314, div. D, title XLIV, §4444, formerly Pub. L. 106-398, §1 [div. C, title XXXI, §3131], Oct. 30, 2000, 114 Stat. 1654, 1654A-454; renumbered Pub. L. 107-314, div. D, title XLIV, §4444, and amended Pub. L. 108-136, div. C, title XXXI, §3141(g)(19), Nov. 24, 2003, 117 Stat. 1768.)

AMENDMENTS

2003—Pub. L. 108-136, §3141(g)(19)(D), in introductory provisions, substituted “section 2623 of this title” for “section 3141” and “October 30, 2000” for “the date of the enactment of this Act”.

PART E—SAVANNAH RIVER SITE, SOUTH CAROLINA

§ 2631. Accelerated schedule for isolating high-level nuclear waste at the Defense Waste Processing Facility, Savannah River Site

The Secretary of Energy shall accelerate the schedule for the isolation of high-level nuclear waste in glass canisters at the Defense Waste Processing Facility at the Savannah River Site, South Carolina, if the Secretary determines that the acceleration of such schedule—

(1) will achieve long-term cost savings to the Federal Government; and

(2) could accelerate the removal and isolation of high-level nuclear waste from long-term storage tanks at the site.

(Pub. L. 107-314, div. D, title XLIV, §4451, formerly Pub. L. 104-201, div. C, title XXXI, §3141, Sept. 23, 1996, 110 Stat. 2834; renumbered Pub. L. 107-314, div. D, title XLIV, §4451, by Pub. L. 108-136, div. C, title XXXI, §3141(g)(21), Nov. 24, 2003, 117 Stat. 1769.)

§ 2632. Multi-year plan for clean-up

The Secretary of Energy shall develop and implement a multi-year plan for the clean-up of nuclear waste at the Savannah River Site that results, or has resulted, from the following:

(1) Nuclear weapons activities carried out at the site.

(2) The processing, treating, packaging, and disposal of Department of Energy domestic and foreign spent nuclear fuel rods at the site.

(Pub. L. 107-314, div. D, title XLIV, §4452, formerly Pub. L. 104-201, div. C, title XXXI, §3142(e), Sept. 23, 1996, 110 Stat. 2836; renumbered Pub. L. 107-314, div. D, title XLIV, §4452, by Pub.

L. 108-136, div. C, title XXXI, §3141(g)(22), Nov. 24, 2003, 117 Stat. 1769.)

AMENDMENTS

2003—Pub. L. 108-136, §3141(g)(22)(C), inserted section catchline, struck out former subsec. heading, and inserted in text “of Energy” after “The Secretary”.

§ 2633. Continuation of processing, treatment, and disposal of legacy nuclear materials

The Secretary of Energy shall continue operations and maintain a high state of readiness at the H-canyon facility at the Savannah River Site, Aiken, South Carolina, and shall provide technical staff necessary to operate and so maintain such facility.

(Pub. L. 107-314, div. D, title XLIV, §4453, formerly Pub. L. 106-398, §1 [div. C, title XXXI, §3137(a)], Oct. 30, 2000, 114 Stat. 1654, 1654A-460; renumbered Pub. L. 107-314, div. D, title XLIV, §4453, and amended Pub. L. 108-136, div. C, title XXXI, §§3115(a), 3141(g)(23)(A), Nov. 24, 2003, 117 Stat. 1745, 1769.)

AMENDMENTS

2003—Pub. L. 108-136, §3141(g)(23)(A)(iii), inserted section catchline and struck out former subsec. heading.

Pub. L. 108-136, §3115(a), substituted “H-canyon facility” for “F-canyon and H-canyon facilities” and “such facility” for “such facilities”.

§ 2634. Continuation of processing, treatment, and disposition of legacy nuclear materials

The Secretary of Energy shall continue operations and maintain a high state of readiness at the F-canyon and H-canyon facilities at the Savannah River Site, Aiken, South Carolina, and shall provide the technical staff necessary to operate and so maintain such facilities.

(Pub. L. 107-314, div. D, title XLIV, §4453A, formerly Pub. L. 106-65, div. C, title XXXI, §3132, Oct. 5, 1999, 113 Stat. 925; renumbered Pub. L. 107-314, div. D, title XLIV, §4453A, by Pub. L. 108-136, div. C, title XXXI, §3141(g)(23)(B), Nov. 24, 2003, 117 Stat. 1769.)

§ 2635. Continuation of processing, treatment, and disposition of legacy nuclear materials

The Secretary of Energy shall continue operations and maintain a high state of readiness at the F-canyon and H-canyon facilities at the Savannah River Site, Aiken, South Carolina, and shall provide technical staff necessary to operate and so maintain such facilities.

(Pub. L. 107-314, div. D, title XLIV, §4453B, formerly Pub. L. 105-261, div. C, title XXXI, §3135, Oct. 17, 1998, 112 Stat. 2248; renumbered Pub. L. 107-314, div. D, title XLIV, §4453B, by Pub. L. 108-136, div. C, title XXXI, §3141(g)(23)(C), Nov. 24, 2003, 117 Stat. 1770.)

§ 2636. Continuation of processing, treatment, and disposal of legacy nuclear materials

The Secretary of Energy shall continue operations and maintain a high state of readiness at the F-canyon and H-canyon facilities at the Savannah River Site and shall provide technical staff necessary to operate and maintain such facilities at that state of readiness.

(Pub. L. 107-314, div. D, title XLIV, §4453C, formerly Pub. L. 105-85, div. C, title XXXI, §3136(b), Nov. 18, 1997, 111 Stat. 2038; renumbered Pub. L. 107-314, div. D, title XLIV, §4453C, by Pub. L. 108-136, div. C, title XXXI, §3141(g)(23)(D), Nov. 24, 2003, 117 Stat. 1770.)

AMENDMENTS

2003—Pub. L. 108-136, §3141(g)(23)(D)(iii), inserted section catchline and struck out former subsec. heading.

§ 2637. Continuation of processing, treatment, and disposal of legacy nuclear materials

The Secretary of Energy shall continue operations and maintain a high state of readiness at the H-canyon facility and the F-canyon facility at the Savannah River Site, and shall provide technical staff necessary to operate and so maintain such facilities, pending the development and implementation of the plan referred to in section 2632 of this title.

(Pub. L. 107-314, div. D, title XLIV, §4453D, formerly Pub. L. 104-201, div. C, title XXXI, §3142(f), Sept. 23, 1996, 110 Stat. 2836; renumbered Pub. L. 107-314, div. D, title XLIV, §4453D, and amended Pub. L. 108-136, div. C, title XXXI, §3141(g)(23)(E), Nov. 24, 2003, 117 Stat. 1770.)

AMENDMENTS

2003—Pub. L. 108-136, §3141(g)(23)(E)(iii), inserted section catchline, struck out former subsec. heading, inserted “of Energy” after “The Secretary”, and substituted “section 2632 of this title” for “subsection (e)”.

§ 2638. Limitation on use of funds for decommissioning F-canyon facility

No amounts authorized to be appropriated or otherwise made available for the Department of Energy by the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001 (as enacted into law by Public Law 106-398) or any other Act may be obligated or expended for purposes of commencing the decommissioning of the F-canyon facility at the Savannah River Site until the Secretary of Energy submits to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives, and the Defense Nuclear Facilities Safety Board, a report setting forth—

(1) an assessment whether or not all materials present in the F-canyon facility as of the date of the report that required stabilization have been safely stabilized as of that date;

(2) an assessment whether or not the requirements applicable to the F-canyon facility to meet the future needs of the United States for fissile materials disposition can be met through full use of the H-canyon facility at the Savannah River Site; and

(3) if it appears that one or more of the requirements described in paragraph (2) cannot be met through full use of the H-canyon facility—

(A) an identification by the Secretary of each such requirement that cannot be met through full use of the H-canyon facility; and

(B) for each requirement so identified, the reasons why such requirement cannot be met through full use of the H-canyon facil-

ity and a description of the alternative capability for fissile materials disposition that is needed to meet such requirement.

(Pub. L. 107-314, div. D, title XLIV, §4454, formerly Pub. L. 106-398, §1 [div. C, title XXXI, §3137(b)], Oct. 30, 2000, 114 Stat. 1654, 1654A-460; renumbered Pub. L. 107-314, div. D, title XLIV, §4454, and amended Pub. L. 108-136, div. C, title XXXI, §§3115(b), 3141(g)(24), Nov. 24, 2003, 117 Stat. 1745, 1770.)

REFERENCES IN TEXT

The Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001, referred to in text, is Pub. L. 106-398, §1 [H.R. 5408], Oct. 30, 2000, 114 Stat. 1654, 1654A-1, as amended. For complete classification of this Act to the Code, see Tables.

AMENDMENTS

2003—Pub. L. 108-136, §3141(g)(24)(C), inserted section catchline, struck out former subsec. heading, and, in introductory provisions, substituted “the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001 (as enacted into law by Public Law 106-398) or any other Act” for “this or any other Act” and “the Secretary of Energy” for “the Secretary”.

Pub. L. 108-136, §3115(b)(2), substituted “a report setting forth—” and pars. (1) to (3) for “the following:” and former pars. (1) to (3) which contained somewhat similar provisions.

Pub. L. 108-136, §3115(b)(1), in introductory provisions, substituted “submits to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives, and the Defense Nuclear Facilities Safety Board,” for “and the Defense Nuclear Facilities Safety Board jointly submit to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives”.

SUBCHAPTER V—SAFEGUARDS AND SECURITY MATTERS

PART A—SAFEGUARDS AND SECURITY

§ 2651. Prohibition on international inspections of Department of Energy facilities unless protection of restricted data is certified

(a) Prohibition on inspections

The Secretary of Energy may not allow an inspection of a nuclear weapons facility by the International Atomic Energy Agency until the Secretary certifies to Congress that no restricted data will be revealed during such inspection.

(b) Omitted

(c) Restricted data defined

In this section, the term “restricted data” has the meaning provided by section 2014(y) of title 42.

(Pub. L. 107-314, div. D, title XLV, §4501, formerly Pub. L. 104-106, div. C, title XXXI, §3154, Feb. 10, 1996, 110 Stat. 624; renumbered Pub. L. 107-314, div. D, title XLV, §4501, and amended Pub. L. 108-136, div. C, title XXXI, §3141(h)(2), Nov. 24, 2003, 117 Stat. 1771.)

CODIFICATION

Section is comprised of section 4501 of Pub. L. 107-314. Subsec. (b) of section 4501 of Pub. L. 107-314 amended provisions set out as a note under section 2153 of Title 42, The Public Health and Welfare.

Subsec. (a) of section 3154 of Pub. L. 104-106 was formerly set out as a note under section 2164 of Title 42, prior to renumbering by Pub. L. 108-136.

AMENDMENTS

2003—Pub. L. 108-136, §3141(h)(2)(D), redesignated par. (1) of subsec. (a) as entire subsec. (a) and par. (2) of subsec. (a) as subsec. (c) and, in subsec. (c), inserted heading and substituted “In this section” for “For purposes of paragraph (1)”. Subsec. (c) was editorially transferred to follow subsec. (b), to reflect the probable intent of Congress.

§ 2652. Restrictions on access to national laboratories by foreign visitors from sensitive countries

(a) Background review required

The Secretary of Energy may not admit to any facility of a national laboratory other than areas accessible to the general public any individual who is a citizen or agent of a nation that is named on the current sensitive countries list unless the Secretary first completes a background review with respect to that individual.

(b) Moratorium pending certification

(1) During the period described in paragraph (2), the Secretary may not admit to any facility of a national laboratory other than areas accessible to the general public any individual who is a citizen or agent of a nation that is named on the current sensitive countries list.

(2) The period referred to in paragraph (1) is the period beginning on November 4, 1999, and ending on the later of the following:

(A) January 3, 2000.

(B) The date that is 45 days after the date on which the Secretary submits to Congress the certifications described in paragraph (3).

(3) The certifications referred to in paragraph (2) are one certification each by the Director of Counterintelligence of the Department of Energy, the Director of the Federal Bureau of Investigation, and the Director of Central Intelligence, of each of the following:

(A) That the foreign visitors program at that facility complies with applicable orders, regulations, and policies of the Department of Energy relating to the safeguarding and security of sensitive information and fulfills any counterintelligence requirements arising under such orders, regulations, and policies.

(B) That the foreign visitors program at that facility complies with Presidential Decision Directives and similar requirements relating to the safeguarding and security of sensitive information and fulfills any counterintelligence requirements arising under such Directives or requirements.

(C) That the foreign visitors program at that facility includes adequate protections against the inadvertent release of Restricted Data, information important to the national security of the United States, and any other sensitive information the disclosure of which might harm the interests of the United States.

(D) That the foreign visitors program at that facility does not pose an undue risk to the national security interests of the United States.

(c) Waiver of moratorium

(1) The Secretary of Energy may waive the prohibition in subsection (b) on a case-by-case

basis with respect to any specific individual or any specific delegation of individuals whose admission to a national laboratory is determined by the Secretary to be in the interest of the national security of the United States.

(2) Not later than the seventh day of the month following a month in which a waiver is made, the Secretary shall submit a report in writing providing notice of each waiver made in that month to the following:

(A) The Committee on Armed Services and the Select Committee on Intelligence of the Senate.

(B) The Committee on Armed Services and the Permanent Select Committee on Intelligence of the House of Representatives.

(3) Each such report shall be in classified form and shall contain the identity of each individual or delegation for whom such a waiver was made and, with respect to each such individual or delegation, the following information:

(A) A detailed justification for the waiver.

(B) For each individual with respect to whom a background review was conducted, whether the background review determined that negative information exists with respect to that individual.

(C) The Secretary's certification that the admission of that individual or delegation to a national laboratory is in the interest of the national security of the United States.

(4) The authority of the Secretary under paragraph (1) may be delegated only to the Director of Counterintelligence of the Department of Energy.

(d) Exception to moratorium for certain individuals

The moratorium under subsection (b) shall not apply to any person who—

(1) is, on October 5, 1999, an employee or assignee of the Department of Energy, or of a contractor of the Department; and

(2) has undergone a background review in accordance with subsection (a).

(e) Exception to moratorium for certain programs

The moratorium under subsection (b) shall not apply—

(1) to activities relating to cooperative threat reduction with states of the former Soviet Union; or

(2) to the materials protection control and accounting program of the Department.

(f) Sense of Congress regarding background reviews

It is the sense of Congress that the Secretary of Energy, the Director of the Federal Bureau of Investigation, and the Director of Central Intelligence should ensure that background reviews carried out under this section are completed in not more than 15 days.

(g) Definitions

For purposes of this section:

(1) The term “background review”, commonly known as an indices check, means a review of information provided by the Director of Central Intelligence and the Director of the

Federal Bureau of Investigation regarding personal background, including information relating to any history of criminal activity or to any evidence of espionage.

(2) The term “sensitive countries list” means the list prescribed by the Secretary of Energy known as the Department of Energy List of Sensitive Countries as in effect on January 1, 1999.

(3) The term “national laboratory” means any of the following:

(A) Lawrence Livermore National Laboratory, Livermore, California.

(B) Los Alamos National Laboratory, Los Alamos, New Mexico.

(C) Sandia National Laboratories, Albuquerque, New Mexico and Livermore, California.

(4) The term “Restricted Data” has the meaning given that term in section 2014(y) of title 42.

(Pub. L. 107-314, div. D, title XLV, §4502, formerly Pub. L. 106-65, div. C, title XXXI, §3146, Oct. 5, 1999, 113 Stat. 935; renumbered Pub. L. 107-314, div. D, title XLV, §4502, and amended Pub. L. 108-136, div. C, title XXXI, §3141(h)(3), Nov. 24, 2003, 117 Stat. 1771.)

CODIFICATION

Section was formerly classified to section 7383c of Title 42, The Public Health and Welfare, prior to renumbering by Pub. L. 108-136.

AMENDMENTS

2003—Subsec. (b)(2). Pub. L. 108-136, §3141(h)(3)(D)(i)(I), substituted “on November 4, 1999,” for “30 days after October 5, 1999,” in introductory provisions.

Subsec. (b)(2)(A). Pub. L. 108-136, §3141(h)(3)(D)(i)(II), substituted “January 3, 2000” for “The date that is 90 days after October 5, 1999”.

Subsec. (d)(1). Pub. L. 108-136, §3141(h)(3)(D)(ii), substituted “October 5, 1999,” for “the date of the enactment of this Act,” in the original, which for purposes of codification had been changed to “October 5, 1999,” thus requiring no change in text.

Subsec. (g)(3), (4). Pub. L. 108-136, §3141(h)(3)(D)(iii), added pars. (3) and (4).

CHANGE OF NAME

Reference to the Director of Central Intelligence or the Director of the Central Intelligence Agency in the Director's capacity as the head of the intelligence community deemed to be a reference to the Director of National Intelligence. Reference to the Director of Central Intelligence or the Director of the Central Intelligence Agency in the Director's capacity as the head of the Central Intelligence Agency deemed to be a reference to the Director of the Central Intelligence Agency. See section 1081(a), (b) of Pub. L. 108-458, set out as a note under section 401 of Title 50, War and National Defense.

§ 2653. Background investigations of certain personnel at Department of Energy facilities

(a) In general

The Secretary of Energy shall ensure that an investigation meeting the requirements of section 2165 of title 42 is made for each Department of Energy employee, or contractor employee, at a national laboratory or nuclear weapons production facility who—

(1) carries out duties or responsibilities in or around a location where Restricted Data is present; or

(2) has or may have regular access to a location where Restricted Data is present.

(b) Compliance

The Secretary shall have 15 months from October 5, 1999, to meet the requirement in subsection (a).

(c) Definitions

In this section, the terms “national laboratory” and “Restricted Data” have the meanings given such terms in section 2652(g) of this title.

(Pub. L. 107-314, div. D, title XLV, §4503, formerly Pub. L. 106-65, div. C, title XXXI, §3143, Oct. 5, 1999, 113 Stat. 934; renumbered Pub. L. 107-314, div. D, title XLV, §4503, and amended Pub. L. 108-136, div. C, title XXXI, §3141(h)(4), Nov. 24, 2003, 117 Stat. 1772.)

CODIFICATION

Section was formerly classified to section 7383a of Title 42, The Public Health and Welfare, prior to renumbering by Pub. L. 108-136.

AMENDMENTS

2003—Subsec. (b). Pub. L. 108-136, §3141(h)(4)(D)(i), substituted “October 5, 1999,” for “the date of the enactment of this Act” in the original, which for purposes of codification had been changed to “October 5, 1999,” thus requiring no change in text.

Subsec. (c). Pub. L. 108-136, §3141(h)(4)(D)(ii), added subsec. (c).

§ 2654. Department of Energy counterintelligence polygraph program

(a) New counterintelligence polygraph program required

The Secretary of Energy shall carry out, under regulations prescribed under this section, a new counterintelligence polygraph program for the Department of Energy. The purpose of the new program is to minimize the potential for release or disclosure of classified data, materials, or information.

(b) Authorities and limitations

(1) The Secretary shall prescribe regulations for the new counterintelligence polygraph program required by subsection (a) in accordance with the provisions of subchapter II of chapter 5 of title 5 (commonly referred to as the Administrative Procedures Act).

(2) In prescribing regulations for the new program, the Secretary shall take into account the results of the Polygraph Review.

(3) Not later than six months after obtaining the results of the Polygraph Review, the Secretary shall issue a notice of proposed rule-making for the new program.

(c) Omitted

(d) Report on further enhancement of personnel security program

(1) Not later than January 1, 2003, the Administrator for Nuclear Security shall submit to Congress a report setting forth the recommendations of the Administrator for any legislative action that the Administrator considers appropriate in order to enhance the personnel security program of the Department of Energy.

(2) Any recommendations under paragraph (1) regarding the use of polygraphs shall take into account the results of the Polygraph Review.

(e) Polygraph Review defined

In this section, the term “Polygraph Review” means the review of the Committee to Review the Scientific Evidence on the Polygraph of the National Academy of Sciences.

(Pub. L. 107-314, div. D, title XLV, §4504, formerly Pub. L. 107-107, div. C, title XXXI, §3152, Dec. 28, 2001, 115 Stat. 1376; renumbered Pub. L. 107-314, div. D, title XLV, §4504, and amended Pub. L. 108-136, div. C, title XXXI, §3141(h)(5)(A), Nov. 24, 2003, 117 Stat. 1772.)

CODIFICATION

Section is comprised of section 4504 of Pub. L. 107-314. Subsec. (c) of section 4504 of Pub. L. 107-314 repeals section 2655 of this title.

Section was formerly classified to section 7383h-1 of Title 42, The Public Health and Welfare, prior to renumbering by Pub. L. 108-136.

AMENDMENTS

2003—Subsec. (c). Pub. L. 108-136, §3141(h)(5)(A)(iv), made technical amendment. See Codification note above.

§ 2655. Counterintelligence polygraph program

(a) Program required

The Secretary of Energy, acting through the Director of Counterintelligence, shall carry out a counterintelligence polygraph program for the defense-related activities of the Department. The counterintelligence polygraph program shall consist of the administration of counterintelligence polygraph examinations to each covered person who has access to high-risk programs.

(b) Covered persons

(1) Subject to paragraph (2), for purposes of this section, a covered person is one of the following:

- (A) An officer or employee of the Department.
- (B) An expert or consultant under contract to the Department.
- (C) An officer or employee of a contractor of the Department.
- (D) An individual assigned or detailed to the Department.
- (E) An applicant for a position in the Department.

(2) A person described in paragraph (1) is a covered person for purposes of this section only if the position of the person, or for which the person is applying, under that paragraph is a position in one of the categories of positions listed in section 709.4(a) of title 10, Code of Federal Regulations.

(c) High-risk programs

For purposes of this section, high-risk programs are the following:

- (1) Programs using information known as Sensitive Compartmented Information.
- (2) The programs known as Special Access Programs and Personnel Security and Assurance Programs.
- (3) Any other program or position category specified in section 709.4(a) of title 10, Code of Federal Regulations.

(d) Initial testing and consent

(1) The Secretary may not permit a covered person to have initial access to any high-risk

program unless that person first undergoes a counterintelligence polygraph examination and consents in a signed writing to the counterintelligence polygraph examinations required by this section.

(2) Subject to paragraph (3), the Secretary may, after consultation with appropriate security personnel, waive the applicability of paragraph (1) to a covered person—

(A) if—

(i) the Secretary determines that the waiver is important to the national security interests of the United States;

(ii) the covered person has an active security clearance; and

(iii) the covered person acknowledges in a signed writing that the capacity of the covered person to perform duties under a high-risk program after the expiration of the waiver is conditional upon meeting the requirements of paragraph (1) within the effective period of the waiver;

(B) if another Federal agency certifies to the Secretary that the covered person has completed successfully a full-scope or counterintelligence-scope polygraph examination during the 5-year period ending on the date of the certification; or

(C) if the Secretary determines, after consultation with the covered person and appropriate medical personnel, that the treatment of a medical or psychological condition of the covered person should preclude the administration of the examination.

(3)(A) The Secretary may not commence the exercise of the authority under paragraph (2) to waive the applicability of paragraph (1) to any covered persons until 15 days after the date on which the Secretary submits to the appropriate committees of Congress a report setting forth the criteria to be used by the Secretary for determining when a waiver under paragraph (2)(A) is important to the national security interests of the United States. The criteria shall not include the need to maintain the scientific vitality of the laboratory. The criteria shall include an assessment of counterintelligence risks and programmatic impacts.

(B) Any waiver under paragraph (2)(A) shall be effective for not more than 120 days, and a person who is subject to a waiver under paragraph (2)(A) may not ever be subject to another waiver under paragraph (2)(A).

(C) Any waiver under paragraph (2)(C) shall be effective for the duration of the treatment on which such waiver is based.

(4) The Secretary shall submit to the appropriate committees of Congress on a semi-annual basis a report on any determinations made under paragraph (2)(A) during the 6-month period ending on the date of such report. The report shall include a national security justification for each waiver resulting from such determinations.

(5) In this subsection, the term “appropriate committees of Congress” means the following:

(A) The Committee on Armed Services and the Select Committee on Intelligence of the Senate.

(B) The Committee on Armed Services and the Permanent Select Committee on Intelligence of the House of Representatives.

(6) It is the sense of Congress that the waiver authority in paragraph (2) not be used by the Secretary to exempt from the applicability of paragraph (1) any covered persons in the highest risk categories, such as persons who have access to the most sensitive weapons design information and other highly sensitive programs, including special access programs.

(7) The authority under paragraph (2) to waive the applicability of paragraph (1) to a covered person shall expire on September 30, 2002.

(e) Additional testing

The Secretary may not permit a covered person to have continued access to any high-risk program unless that person undergoes a counterintelligence polygraph examination within five years after that person has initial access, and thereafter—

(1) not less frequently than every five years; and

(2) at any time at the direction of the Director of Counterintelligence.

(f) Counterintelligence polygraph examination

For purposes of this section, the term “counterintelligence polygraph examination” means a polygraph examination using questions reasonably calculated to obtain counterintelligence information, including questions relating to espionage, sabotage, terrorism, unauthorized disclosure of classified information, deliberate damage to or malicious misuse of a United States Government information or defense system, and unauthorized contact with foreign nationals.

(g) Regulations

The Secretary shall prescribe any regulations necessary to carry out this section. Those regulations shall include procedures, to be developed in consultation with the Federal Bureau of Investigation, for—

(1) identifying and addressing “false positive” results of polygraph examinations; and

(2) ensuring that adverse personnel actions not be taken against an individual solely by reason of that individual’s physiological reaction to a question in a polygraph examination, unless reasonable efforts are first made to independently determine through alternative means the veracity of that individual’s response to that question.

(h) Plan for extension of program

Not later than April 5, 2000, the Secretary shall submit to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives a plan on extending the program required by this section. The plan shall provide for the administration of counterintelligence polygraph examinations in accordance with the program to each covered person who has access to—

(1) the programs known as Personnel Assurance Programs; and

(2) the information identified as Sensitive Compartmented Information.

(Pub. L. 107-314, div. D, title XLV, §4504A, formerly Pub. L. 106-65, div. C, title XXXI, §3154, Oct. 5, 1999, 113 Stat. 941; Pub. L. 106-398, §1 [div. C, title XXXI, §3135], Oct. 30, 2000, 114 Stat. 1654, 1654A-456; renumbered Pub. L. 107-314, div. D,

title XLV, § 4504A, and amended Pub. L. 108-136, div. C, title XXXI, § 3141(h)(5)(B), Nov. 24, 2003, 117 Stat. 1773.)

REPEAL OF SECTION

Pub. L. 107-314, div. D, title XLV, § 4504(c), formerly Pub. L. 107-107, div. C, title XXXI, § 3152(c), Dec. 28, 2001, 115 Stat. 1377; renumbered Pub. L. 107-314, div. D, title XLV, § 4504(c), and amended Pub. L. 108-136, div. C, title XXXI, § 3141(h)(5)(A), Nov. 24, 2003, 117 Stat. 1772, provided that, effective 30 days after the Secretary of Energy submits to the Committees on Armed Services and Appropriations of Senate and House of Representatives the Secretary's certification that the final rule for the new counterintelligence polygraph program required by section 2654(a) of this title has been fully implemented, this section is repealed.

CODIFICATION

Section was formerly classified to section 7383h of Title 42, The Public Health and Welfare, prior to renumbering by Pub. L. 108-136.

AMENDMENTS

2003—Subsec. (h). Pub. L. 108-136, § 3141(h)(5)(B)(iv), substituted “April 5, 2000,” for “180 days after October 5, 1999,”.

2000—Subsec. (b). Pub. L. 106-398, § 1 [div. C, title XXXI, § 3135(a)], amended heading and text of subsec. (b) generally. Prior to amendment, text read as follows: “For purposes of this section, a covered person is one of the following:

“(1) An officer or employee of the Department.

“(2) An expert or consultant under contract to the Department.

“(3) An officer or employee of a contractor of the Department.”

Subsec. (c). Pub. L. 106-398, § 1 [div. C, title XXXI, § 3135(b)], amended heading and text of subsec. (c) generally. Prior to amendment, text read as follows: “For purposes of this section, high-risk programs are the programs known as—

“(1) Special Access Programs; and

“(2) Personnel Security and Assurance Programs.”

Subsec. (d). Pub. L. 106-398, § 1 [div. C, title XXXI, § 3135(c)], designated existing provisions as par. (1) and added pars. (2) to (7).

Subsec. (f). Pub. L. 106-398, § 1 [div. C, title XXXI, § 3135(d)], inserted “terrorism,” after “sabotage,” and “deliberate damage to or malicious misuse of a United States Government information or defense system,” before “and unauthorized”.

EFFECTIVE DATE OF REPEAL

Pub. L. 107-314, div. D, title XLV, § 4504(c), formerly Pub. L. 107-107, div. C, title XXXI, § 3152(c), Dec. 28, 2001, 115 Stat. 1377, renumbered Pub. L. 107-314, div. D, title XLV, § 4504(c), and amended Pub. L. 108-136, div. C, title XXXI, § 3141(h)(5)(A), Nov. 24, 2003, 117 Stat. 1772, provided that this section is repealed effective 30 days after the Secretary of Energy submits to the Committees on Armed Services and Appropriations of Senate and House of Representatives the Secretary's certification that the final rule for the new counterintelligence polygraph program required by section 2654(a) of this title has been fully implemented.

§ 2656. Notice to congressional committees of certain security and counterintelligence failures within nuclear energy defense programs

(a) Required notification

The Secretary of Energy shall submit to the Committees on Armed Services of the Senate

and House of Representatives a notification of each significant nuclear defense intelligence loss. Any such notification shall be provided only after consultation with the Director of Central Intelligence and the Director of the Federal Bureau of Investigation, as appropriate.

(b) Significant nuclear defense intelligence losses

In this section, the term “significant nuclear defense intelligence loss” means any national security or counterintelligence failure or compromise of classified information at a facility of the Department of Energy or operated by a contractor of the Department that the Secretary considers likely to cause significant harm or damage to the national security interests of the United States.

(c) Manner of notification

Notification of a significant nuclear defense intelligence loss under subsection (a) shall be provided, in accordance with the procedures established pursuant to subsection (d), not later than 30 days after the date on which the Department of Energy determines that the loss has taken place.

(d) Procedures

The Secretary of Energy and the Committees on Armed Services of the Senate and House of Representatives shall each establish such procedures as may be necessary to protect from unauthorized disclosure classified information, information relating to intelligence sources and methods, and sensitive law enforcement information that is submitted to those committees pursuant to this section and that are otherwise necessary to carry out the provisions of this section.

(e) Statutory construction

(1) Nothing in this section shall be construed as authority to withhold any information from the Committees on Armed Services of the Senate and House of Representatives on the grounds that providing the information to those committees would constitute the unauthorized disclosure of classified information, information relating to intelligence sources and methods, or sensitive law enforcement information.

(2) Nothing in this section shall be construed to modify or supersede any other requirement to report information on intelligence activities to the Congress, including the requirement under section 413 of this title for the President to ensure that the congressional intelligence committees are kept fully informed of the intelligence activities of the United States and for those committees to notify promptly other congressional committees of any matter relating to intelligence activities requiring the attention of those committees.

(Pub. L. 107-314, div. D, title XLV, § 4505, formerly Pub. L. 106-65, div. C, title XXXI, § 3150, Oct. 5, 1999, 113 Stat. 939; renumbered Pub. L. 107-314, div. D, title XLV, § 4505, by Pub. L. 108-136, div. C, title XXXI, § 3141(h)(6), Nov. 24, 2003, 117 Stat. 1773.)

CODIFICATION

Section was formerly classified to section 7383d of Title 42, The Public Health and Welfare, prior to renumbering by Pub. L. 108-136.

CHANGE OF NAME

Reference to the Director of Central Intelligence or the Director of the Central Intelligence Agency in the Director's capacity as the head of the intelligence community deemed to be a reference to the Director of National Intelligence. Reference to the Director of Central Intelligence or the Director of the Central Intelligence Agency in the Director's capacity as the head of the Central Intelligence Agency deemed to be a reference to the Director of the Central Intelligence Agency. See section 1081(a), (b) of Pub. L. 108-458, set out as a note under section 401 of Title 50, War and National Defense.

§ 2657. Submittal of annual report on status of security functions at nuclear weapons facilities

Not later than September 1 each year, the Secretary of Energy shall submit to the congressional defense committees the report entitled "Annual Report to the President on the Status of Safeguards and Security of Domestic Nuclear Weapons Facilities", or any successor report to such report.

(Pub. L. 107-314, div. D, title XLV, § 4506, formerly Pub. L. 105-85, div. C, title XXXI, § 3162, Nov. 18, 1997, 111 Stat. 2049; Pub. L. 106-65, div. C, title XXXI, § 3142(h)(2), Oct. 5, 1999, 113 Stat. 934; renumbered Pub. L. 107-314, div. D, title XLV, § 4506, and amended Pub. L. 108-136, div. C, title XXXI, § 3141(h)(7), Nov. 24, 2003, 117 Stat. 1773.)

CODIFICATION

Section was formerly set out as a note under section 7274m of Title 42, The Public Health and Welfare, prior to renumbering by Pub. L. 108-136.

AMENDMENTS

2003—Subsec. (b). Pub. L. 108-136, § 3141(h)(7)(D), which directed the amendment of subsec. (b) by inserting "of the National Defense Authorization Act for Fiscal Year 1998 (Public Law 105-85; 111 Stat. 2048; 42 U.S.C. 7251 note)" after "section 3161", could not be executed because of the repeal of subsec. (b) by Pub. L. 106-65. See 1999 Amendment note below.

1999—Pub. L. 106-65 struck out subsec. (a) designation and heading and struck out heading and text of subsec. (b). Text read as follows: "The Secretary shall include with each report submitted under subsection (a) in fiscal years 1998 through 2000 any comments on such report by the members of the Department of Energy Security Management Board established under section 3161 that such members consider appropriate."

§ 2658. Report on counterintelligence and security practices at national laboratories

(a) In general

Not later than March 1 of each year, the Secretary of Energy shall submit to the Congress a report for the preceding year on counterintelligence and security practices at the facilities of the national laboratories (whether or not classified activities are carried out at the facility).

(b) Content of report

The report shall include, with respect to each national laboratory, the following:

(1) The number of employees, including full-time counterintelligence and security professionals and contractor employees.

(2) A description of the counterintelligence and security training courses conducted and, for each such course, any requirement that employees successfully complete that course.

(3) A description of each contract awarded that provides an incentive for the effective performance of counterintelligence or security activities.

(4) A description of the requirement that an employee report the travel to sensitive countries of that employee (whether or not the travel was for official business).

(5) The number of trips by individuals who traveled to sensitive countries, with identification of the sensitive countries visited.

(c) National laboratory defined

In this section, the term "national laboratory" has the meaning given that term in section 2652(g)(3) of this title.

(Pub. L. 107-314, div. D, title XLV, § 4507, formerly Pub. L. 106-65, div. C, title XXXI, § 3152, Oct. 5, 1999, 113 Stat. 940; renumbered Pub. L. 107-314, div. D, title XLV, § 4507, and amended Pub. L. 108-136, div. C, title XXXI, § 3141(h)(8), Nov. 24, 2003, 117 Stat. 1773.)

CODIFICATION

Section was formerly classified to section 7383f of Title 42, The Public Health and Welfare, prior to renumbering by Pub. L. 108-136.

AMENDMENTS

2003—Subsec. (c). Pub. L. 108-136, § 3141(h)(8)(D), added subsec. (c).

§ 2659. Report on security vulnerabilities of national laboratory computers

(a) Report required

Not later than March 1 of each year, the National Counterintelligence Policy Board shall prepare a report on the security vulnerabilities of the computers of the national laboratories.

(b) Preparation of report

In preparing the report, the National Counterintelligence Policy Board shall establish a so-called "red team" of individuals to perform an operational evaluation of the security vulnerabilities of the computers of one or more national laboratories, including by direct experimentation. Such individuals shall be selected by the National Counterintelligence Policy Board from among employees of the Department of Defense, the National Security Agency, the Central Intelligence Agency, the Federal Bureau of Investigation, and of other agencies, and may be detailed to the National Counterintelligence Policy Board from such agencies without reimbursement and without interruption or loss of civil service status or privilege.

(c) Submission of report to Secretary of Energy and to FBI Director

Not later than March 1 of each year, the report shall be submitted in classified and unclassified form to the Secretary of Energy and the Director of the Federal Bureau of Investigation.

(d) Forwarding to congressional committees

Not later than 30 days after the report is submitted, the Secretary and the Director shall each separately forward that report, with the recommendations in classified and unclassified form of the Secretary or the Director, as applicable, in response to the findings of that report, to the following:

(1) The Committee on Armed Services and the Select Committee on Intelligence of the Senate.

(2) The Committee on Armed Services and the Permanent Select Committee on Intelligence of the House of Representatives.

(e) First report

The first report under this section shall be the report for the year 2000. That report shall cover each of the national laboratories.

(f) National laboratory defined

In this section, the term “national laboratory” has the meaning given that term in section 2652(g)(3) of this title.

(Pub. L. 107–314, div. D, title XLV, §4508, formerly Pub. L. 106–65, div. C, title XXXI, §3153, Oct. 5, 1999, 113 Stat. 940; renumbered Pub. L. 107–314, div. D, title XLV, §4508, and amended Pub. L. 108–136, div. C, title XXXI, §3141(h)(9), Nov. 24, 2003, 117 Stat. 1774.)

CODIFICATION

Section was formerly classified to section 7383g of Title 42, The Public Health and Welfare, prior to renumbering by Pub. L. 108–136.

AMENDMENTS

2003—Subsec. (f). Pub. L. 108–136, §3141(h)(9)(D), added subsec. (f).

PART B—CLASSIFIED INFORMATION

§ 2671. Review of certain documents before declassification and release

(a) In general

The Secretary of Energy shall ensure that, before a document of the Department of Energy that contains national security information is released or declassified, such document is reviewed to determine whether it contains restricted data.

(b) Limitation on declassification

The Secretary may not implement the automatic declassification provisions of Executive Order 12958 if the Secretary determines that such implementation could result in the automatic declassification and release of documents containing restricted data.

(c) Restricted data defined

In this section, the term “restricted data” has the meaning provided by section 2014(y) of title 42.

(Pub. L. 107–314, div. D, title XLV, §4521, formerly Pub. L. 104–106, div. C, title XXXI, §3155, Feb. 10, 1996, 110 Stat. 625; renumbered Pub. L. 107–314, div. D, title XLV, §4521, by Pub. L. 108–136, div. C, title XXXI, §3141(h)(11), Nov. 24, 2003, 117 Stat. 1774.)

REFERENCES IN TEXT

Executive Order 12958, referred to in subsec. (b), is set out as a note under section 435 of this title.

CODIFICATION

Section was formerly set out as a note under section 2162 of Title 42, The Public Health and Welfare, prior to renumbering by Pub. L. 108–136.

§ 2672. Protection against inadvertent release of Restricted Data and Formerly Restricted Data

(a) Plan for protection against release

The Secretary of Energy and the Archivist of the United States shall, after consultation with the members of the National Security Council and in consultation with the Secretary of Defense and the heads of other appropriate Federal agencies, develop a plan to prevent the inadvertent release of records containing Restricted Data or Formerly Restricted Data during the automatic declassification of records under Executive Order No. 12958 (50 U.S.C. 435 note).

(b) Plan elements

The plan under subsection (a) shall include the following:

(1) The actions to be taken in order to ensure that records subject to Executive Order No. 12958 are reviewed on a page-by-page basis for Restricted Data and Formerly Restricted Data unless they have been determined to be highly unlikely to contain Restricted Data or Formerly Restricted Data.

(2) The criteria and process by which documents are determined to be highly unlikely to contain Restricted Data or Formerly Restricted Data.

(3) The actions to be taken in order to ensure proper training, supervision, and evaluation of personnel engaged in declassification under that Executive order so that such personnel recognize Restricted Data and Formerly Restricted Data.

(4) The extent to which automated declassification technologies will be used under that Executive order to protect Restricted Data and Formerly Restricted Data from inadvertent release.

(5) Procedures for periodic review and evaluation by the Secretary of Energy, in consultation with the Director of the Information Security Oversight Office of the National Archives and Records Administration, of compliance by Federal agencies with the plan.

(6) Procedures for resolving disagreements among Federal agencies regarding declassification procedures and decisions under the plan.

(7) The funding, personnel, and other resources required to carry out the plan.

(8) A timetable for implementation of the plan.

(c) Limitation on declassification of certain records

(1) Effective on October 17, 1998, and except as provided in paragraph (3), a record referred to in subsection (a) may not be declassified unless the agency having custody of the record reviews the record on a page-by-page basis to ensure that the record does not contain Restricted Data or Formerly Restricted Data.

(2) Any record determined as a result of a review under paragraph (1) to contain Restricted Data or Formerly Restricted Data may not be declassified until the Secretary of Energy, in conjunction with the head of the agency having custody of the record, determines that the document is suitable for declassification.

(3) After the date occurring 60 days after the submission of the plan required by subsection (a) to the committees referred to in paragraphs (1) and (2) of subsection (d), the requirement under paragraph (1) to review a record on a page-by-page basis shall not apply in the case of a record determined, under the actions specified in the plan pursuant to subsection (b)(1), to be a record that is highly unlikely to contain Restricted Data or Formerly Restricted Data.

(d) Submission of plan

The Secretary of Energy shall submit the plan required under subsection (a) to the following:

(1) The Committee on Armed Services of the Senate.

(2) The Committee on Armed Services of the House of Representatives.

(3) The Assistant to the President for National Security Affairs.

(e) Submission of reviews

The Secretary of Energy shall, on a periodic basis, submit a summary of the results of the periodic reviews and evaluations specified in the plan pursuant to subsection (b)(4) to the committees and Assistant to the President specified in subsection (d).

(f) Report and notification regarding inadvertent releases

(1) The Secretary of Energy shall submit to the committees and Assistant to the President specified in subsection (d) a report on inadvertent releases of Restricted Data or Formerly Restricted Data under Executive Order No. 12958 that occurred before October 17, 1998.

(2) Commencing with inadvertent releases discovered on or after October 30, 2000, the Secretary of Energy shall, on a quarterly basis, submit a report to the committees and Assistant to the President specified in subsection (d). The report shall state whether any inadvertent releases described in paragraph (1) occurred during the immediately preceding quarter and, if so, shall identify each such release.

(g) Definition

In this section, the term “Restricted Data” has the meaning given that term in section 2014(y) of title 42.

(Pub. L. 107-314, div. D, title XLV, §4522, formerly Pub. L. 105-261, div. C, title XXXI, §3161, Oct. 17, 1998, 112 Stat. 2259; Pub. L. 106-65, div. A, title X, §1067(3), Oct. 5, 1999, 113 Stat. 774; Pub. L. 106-398, §1 [div. C, title XXXI, §3193(a)], Oct. 30, 2000, 114 Stat. 1654, 1654A-480; renumbered Pub. L. 107-314, div. D, title XLV, §4522, and amended Pub. L. 108-136, div. C, title XXXI, §3141(h)(12), Nov. 24, 2003, 117 Stat. 1774.)

CODIFICATION

Section was formerly set out as a note under section 435 of this title prior to renumbering by Pub. L. 108-136.

AMENDMENTS

2003—Subsec. (c)(1). Pub. L. 108-136, §3141(h)(12)(D)(i), substituted “October 17, 1998,” for “the date of the enactment of this Act”.

Subsec. (f)(1). Pub. L. 108-136, §3141(h)(12)(D)(ii), substituted “October 17, 1998” for “the date of the enactment of this Act”.

Subsec. (f)(2). Pub. L. 108-136, §3141(h)(12)(D)(iii), substituted “Commencing with inadvertent releases dis-

covered on or after October 30, 2000, the Secretary” for “The Secretary”.

2000—Subsec. (f)(2). Pub. L. 106-398 amended par. (2) generally. Prior to amendment, par. (2) read as follows: “Not later than 30 days after any such inadvertent release occurring after the date of the enactment of this Act, the Secretary of Energy shall notify the committees and Assistant to the President specified in subsection (d) of such releases.”

1999—Subsec. (d)(2). Pub. L. 106-65 substituted “Committee on Armed Services” for “Committee on National Security”.

EFFECTIVE DATE OF 2000 AMENDMENT

Pub. L. 106-398, §1 [div. C, title XXXI, §3193(b)], Oct. 30, 2000, 114 Stat. 1654, 1654A-481, provided that: “The amendment made by subsection (a) [amending this section] apply [sic] with respect to inadvertent releases of Restricted Data and Formerly Restricted Data that are discovered on or after the date of the enactment of this Act [Oct. 30, 2000].”

§ 2673. Supplement to plan for declassification of Restricted Data and Formerly Restricted Data

(a) Supplement to plan

The Secretary of Energy and the Archivist of the United States shall, after consultation with the members of the National Security Council and in consultation with the Secretary of Defense and the heads of other appropriate Federal agencies, develop a supplement to the plan required under subsection (a) of section 2672 of this title.

(b) Contents of supplement

The supplement shall provide for the application of that plan (including in particular the element of the plan required by subsection (b)(1) of section 2672 of this title) to all records subject to Executive Order No. 12958 that were determined before October 17, 1998, to be suitable for declassification.

(c) Limitation on declassification of records

All records referred to in subsection (b) shall be treated, for purposes of subsection (c) of section 2672 of this title, in the same manner as records referred to in subsection (a) of such section.

(d) Submission of supplement

The Secretary of Energy shall submit the supplement required under subsection (a) to the recipients of the plan referred to in subsection (d) of section 2672 of this title.

(Pub. L. 107-314, div. D, title XLV, §4523, formerly Pub. L. 106-65, div. C, title XXXI, §3149, Oct. 5, 1999, 113 Stat. 938; renumbered Pub. L. 107-314, div. D, title XLV, §4523, and amended Pub. L. 108-136, div. C, title XXXI, §3141(h)(13), Nov. 24, 2003, 117 Stat. 1775.)

REFERENCES IN TEXT

Executive Order No. 12958, referred to in subsec. (b), is set out as a note under section 435 of this title.

CODIFICATION

Section was formerly set out as a note under section 435 of this title prior to renumbering by Pub. L. 108-136.

AMENDMENTS

2003—Subsec. (a). Pub. L. 108-136, §3141(h)(13)(D)(i), substituted “subsection (a) of section 2672 of this title”

for “subsection (a) of section 3161 of the Strom Thurmond National Defense Authorization Act for Fiscal Year 1999 (Public Law 105-261; 112 Stat. 2260; 50 U.S.C. 435 note)”.

Subsec. (b). Pub. L. 108-136, §3141(h)(13)(D)(ii), substituted “subsection (b)(1) of section 2672 of this title” for “section 3161(b)(1) of that Act” and “October 17, 1998,” for “the date of the enactment of that Act”.

Subsec. (c). Pub. L. 108-136, §3141(h)(13)(D)(iii), substituted “subsection (c) of section 2672 of this title” for “section 3161(c) of that Act” and “subsection (a) of such section” for “section 3161(a) of that Act”.

Subsec. (d). Pub. L. 108-136, §3141(h)(13)(D)(iv), substituted “subsection (d) of section 2672 of this title” for “section 3161(d) of that Act”.

§ 2674. Protection of classified information during laboratory-to-laboratory exchanges

(a) Provision of training

The Secretary of Energy shall ensure that all Department of Energy employees and Department of Energy contractor employees participating in laboratory-to-laboratory cooperative exchange activities are fully trained in matters relating to the protection of classified information and to potential espionage and counterintelligence threats.

(b) Countering of espionage and intelligence-gathering abroad

(1) The Secretary shall establish a pool of Department employees and Department contractor employees who are specially trained to counter threats of espionage and intelligence-gathering by foreign nationals against Department employees and Department contractor employees who travel abroad for laboratory-to-laboratory exchange activities or other cooperative exchange activities on behalf of the Department.

(2) The Director of Counterintelligence of the Department of Energy may assign at least one employee from the pool established under paragraph (1) to accompany a group of Department employees or Department contractor employees who travel to any nation designated to be a sensitive country for laboratory-to-laboratory exchange activities or other cooperative exchange activities on behalf of the Department.

(Pub. L. 107-314, div. D, title XLV, §4524, formerly Pub. L. 106-65, div. C, title XXXI, §3145, Oct. 5, 1999, 113 Stat. 935; renumbered Pub. L. 107-314, div. D, title XLV, §4524, by Pub. L. 108-136, div. C, title XXXI, §3141(h)(14), Nov. 24, 2003, 117 Stat. 1775.)

CODIFICATION

Section was formerly classified to section 7383b of Title 42, The Public Health and Welfare, prior to renumbering by Pub. L. 108-136.

§ 2675. Identification in budget materials of amounts for declassification activities and limitation on expenditures for such activities

(a) Amounts for declassification of records

The Secretary of Energy shall include in the budget justification materials submitted to Congress in support of the Department of Energy budget for any fiscal year (as submitted with the budget of the President under section 1105(a) of title 31) specific identification, as a budgetary line item, of the amounts required to carry out programmed activities during that fiscal year to

declassify records pursuant to Executive Order No. 12958 (50 U.S.C. 435 note), or any successor Executive order, or to comply with any statutory requirement to declassify Government records.

(b) Certification required with respect to automatic declassification of records

No records of the Department of Energy that have not as of October 5, 1999, been reviewed for declassification shall be subject to automatic declassification unless the Secretary of Energy certifies to Congress that such declassification would not harm the national security.

(c) Report on automatic declassification of Department of Energy records

Not later than February 1, 2001, the Secretary of Energy shall submit to the Committee on Armed Services of the House of Representatives and the Committee on Armed Services of the Senate a report on the efforts of the Department of Energy relating to the declassification of classified records under the control of the Department of Energy. Such report shall include the following:

(1) An assessment of whether the Department will be able to review all relevant records for declassification before any date established for automatic declassification.

(2) An estimate of the number of records, if any, that the Department will be unable to review for declassification before any such date and the effect on national security of the automatic declassification of those records.

(3) An estimate of the length of time by which any such date would need to be extended to avoid the automatic declassification of records that have not yet been reviewed as of such date.

(Pub. L. 107-314, div. D, title XLV, §4525, formerly Pub. L. 106-65, div. C, title XXXI, §3173, Oct. 5, 1999, 113 Stat. 949; renumbered Pub. L. 107-314, div. D, title XLV, §4525, and amended Pub. L. 108-136, div. C, title XXXI, §3141(h)(15), Nov. 24, 2003, 117 Stat. 1775.)

CODIFICATION

Section was formerly set out as a note under section 435 of this title prior to renumbering by Pub. L. 108-136.

AMENDMENTS

2003—Subsec. (b). Pub. L. 108-136, §3141(h)(15)(D), substituted “October 5, 1999,” for “the date of the enactment of this Act”.

PART C—EMERGENCY RESPONSE

§ 2691. Responsibility for Defense Programs Emergency Response Program

The Office of Military Applications under the Assistant Secretary of Energy for Defense Programs shall retain responsibility for the Defense Programs Emergency Response Program within the Department of Energy.

(Pub. L. 107-314, div. D, title XLV, §4541, formerly Pub. L. 104-106, div. C, title XXXI, §3158, Feb. 10, 1996, 110 Stat. 626; renumbered Pub. L. 107-314, div. D, title XLV, §4541, by Pub. L. 108-136, div. C, title XXXI, §3141(h)(17), Nov. 24, 2003, 117 Stat. 1776.)

SUBCHAPTER VI—PERSONNEL MATTERS

PART A—PERSONNEL MANAGEMENT

§ 2701. Authority for appointment of certain scientific, engineering, and technical personnel**(a) Authority**

(1) Notwithstanding any provision of title 5 governing appointments in the competitive service and General Schedule classification and pay rates, the Secretary of Energy may—

(A) establish and set the rates of pay for not more than 200 positions in the Department of Energy for scientific, engineering, and technical personnel whose duties will relate to safety at defense nuclear facilities of the Department; and

(B) appoint persons to such positions.

(2) The rate of pay for a position established under paragraph (1) may not exceed the rate of pay payable for level III of the Executive Schedule under section 5314 of title 5.

(3) To the maximum extent practicable, the Secretary shall appoint persons under paragraph (1)(B) to the positions established under paragraph (1)(A) in accordance with the merit system principles set forth in section 2301 of such title.

(4) The Secretary may not appoint more than 100 persons during fiscal year 1995 under the authority provided in this subsection.

(b) OPM review

(1) The Secretary shall enter into an agreement with the Director of the Office of Personnel Management under which agreement the Director shall periodically evaluate the use of the authority set forth in subsection (a)(1). The Secretary shall reimburse the Director for evaluations conducted by the Director pursuant to the agreement. Any such reimbursement shall be credited to the revolving fund referred to in section 1304(e) of title 5.

(2) If the Director determines as a result of such evaluation that the Secretary of Energy is not appointing persons to positions under such authority in a manner consistent with the merit system principles set forth in section 2301 of title 5 or is setting rates of pay at levels that are not appropriate for the qualifications and experience of the persons appointed and the duties of the positions involved, the Director shall notify the Secretary and Congress of that determination.

(3) Upon receipt of a notification under paragraph (2), the Secretary shall—

(A) take appropriate actions to appoint persons to positions under such authority in a manner consistent with such principles or to set rates of pay at levels that are appropriate for the qualifications and experience of the persons appointed and the duties of the positions involved; or

(B) cease appointment of persons under such authority.

(c) Termination

(1) The authority provided under subsection (a)(1) shall terminate on September 30, 2006.

(2) An employee may not be separated from employment with the Department of Energy or

receive a reduction in pay by reason of the termination of authority under paragraph (1).

(Pub. L. 107-314, div. D, title XLVI, § 4601, formerly Pub. L. 103-337, div. C, title XXXI, § 3161, Oct. 5, 1994, 108 Stat. 3095; Pub. L. 105-85, div. C, title XXXI, § 3139, Nov. 18, 1997, 111 Stat. 2040; Pub. L. 105-261, div. C, title XXXI, §§ 3152, 3155, Oct. 17, 1998, 112 Stat. 2253, 2257; Pub. L. 106-398, § 1 [div. C, title XXXI, § 3191], Oct. 30, 2000, 114 Stat. 1654, 1654A-480; Pub. L. 107-314, div. C, title XXXI, § 3174, Dec. 2, 2002, 116 Stat. 2745; renumbered Pub. L. 107-314, div. D, title XLVI, § 4601, by Pub. L. 108-136, div. C, title XXXI, § 3141(i)(2), Nov. 24, 2003, 117 Stat. 1776; Pub. L. 108-375, div. C, title XXXI, § 3112, Oct. 28, 2004, 118 Stat. 2160.)

REFERENCES IN TEXT

The provisions of title 5 governing appointments in the competitive service, referred to in subsec. (a)(1), are classified generally to section 3301 et seq. of Title 5, Government Organization and Employees.

The General Schedule, referred to in subsec. (a)(1), is set out under section 5332 of Title 5, Government Organization and Employees.

CODIFICATION

Section was formerly set out as a note under section 2731 of Title 42, The Public Health and Welfare, prior to renumbering by Pub. L. 108-136.

AMENDMENTS

2004—Subsec. (c)(1). Pub. L. 108-375 substituted “September 30, 2006” for “September 30, 2004”.

2002—Subsec. (c)(1). Pub. L. 107-314, § 3174, substituted “September 30, 2004” for “September 30, 2002”.

2000—Subsec. (c)(1). Pub. L. 106-398 substituted “September 30, 2002” for “September 30, 2000”.

1998—Subsec. (a)(2). Pub. L. 105-261, § 3155, substituted “level III of the Executive Schedule under section 5314” for “level IV of the Executive Schedule under section 5315”.

Subsec. (c)(1). Pub. L. 105-261, § 3152, substituted “September 30, 2000” for “September 30, 1999”.

1997—Subsec. (c). Pub. L. 105-85, § 3139(a), redesignated subsec. (d) as (c) and struck out former subsec. (c) which related to a study to be conducted by the Environmental Protection Agency.

Subsec. (c)(1). Pub. L. 105-85, § 3139(b), substituted “September 30, 1999” for “September 30, 1997”.

Subsec. (d). Pub. L. 105-85, § 3139(a)(2), redesignated subsec. (d) as (c).

§ 2702. Whistleblower protection program**(a) Program required**

The Secretary of Energy shall establish a program to ensure that covered individuals may not be discharged, demoted, or otherwise discriminated against as a reprisal for making protected disclosures.

(b) Covered individuals

For purposes of this section, a covered individual is an individual who is an employee of the Department of Energy, or of a contractor of the Department, who is engaged in the defense activities of the Department.

(c) Protected disclosures

For purposes of this section, a protected disclosure is a disclosure—

(1) made by a covered individual who takes appropriate steps to protect the security of the information in accordance with guidance provided under this section;

(2) made to a person or entity specified in subsection (d); and

(3) of classified or other information that the covered individual reasonably believes to provide direct and specific evidence of any of the following:

(A) A violation of law or Federal regulation.

(B) Gross mismanagement, a gross waste of funds, or abuse of authority.

(C) A false statement to Congress on an issue of material fact.

(d) Persons and entities to which disclosures may be made

A person or entity specified in this subsection is any of the following:

(1) A member of a committee of Congress having primary responsibility for oversight of the department, agency, or element of the Government to which the disclosed information relates.

(2) An employee of Congress who is a staff member of such a committee and has an appropriate security clearance for access to information of the type disclosed.

(3) The Inspector General of the Department of Energy.

(4) The Federal Bureau of Investigation.

(5) Any other element of the Government designated by the Secretary as authorized to receive information of the type disclosed.

(e) Official capacity of persons to whom information is disclosed

A member of, or an employee of Congress who is a staff member of, a committee of Congress specified in subsection (d) who receives a protected disclosure under this section does so in that member or employee's official capacity as such a member or employee.

(f) Assistance and guidance

The Secretary, acting through the Inspector General of the Department of Energy, shall provide assistance and guidance to each covered individual who seeks to make a protected disclosure under this section. Such assistance and guidance shall include the following:

(1) Identifying the persons or entities under subsection (d) to which that disclosure may be made.

(2) Advising that individual regarding the steps to be taken to protect the security of the information to be disclosed.

(3) Taking appropriate actions to protect the identity of that individual throughout that disclosure.

(4) Taking appropriate actions to coordinate that disclosure with any other Federal agency or agencies that originated the information.

(g) Regulations

The Secretary shall prescribe regulations to ensure the security of any information disclosed under this section.

(h) Notification to covered individuals

The Secretary shall notify each covered individual of the following:

(1) The rights of that individual under this section.

(2) The assistance and guidance provided under this section.

(3) That the individual has a responsibility to obtain that assistance and guidance before seeking to make a protected disclosure.

(i) Complaint by covered individuals

If a covered individual believes that that individual has been discharged, demoted, or otherwise discriminated against as a reprisal for making a protected disclosure under this section, the individual may submit a complaint relating to such matter to the Director of the Office of Hearings and Appeals of the Department of Energy.

(j) Investigation by Office of Hearings and Appeals

(1) For each complaint submitted under subsection (i), the Director of the Office of Hearings and Appeals shall—

(A) determine whether or not the complaint is frivolous; and

(B) if the Director determines the complaint is not frivolous, conduct an investigation of the complaint.

(2) The Director shall submit a report on each investigation undertaken under paragraph (1)(B) to—

(A) the individual who submitted the complaint on which the investigation is based;

(B) the contractor concerned, if any; and

(C) the Secretary of Energy.

(k) Remedial action

(1) Whenever the Secretary determines that a covered individual has been discharged, demoted, or otherwise discriminated against as a reprisal for making a protected disclosure under this section, the Secretary shall—

(A) in the case of a Department employee, take appropriate actions to abate the action; or

(B) in the case of a contractor employee, order the contractor concerned to take appropriate actions to abate the action.

(2)(A) If a contractor fails to comply with an order issued under paragraph (1)(B), the Secretary may file an action for enforcement of the order in the appropriate United States district court.

(B) In any action brought under subparagraph (A), the court may grant appropriate relief, including injunctive relief and compensatory and exemplary damages.

(l) Relationship to other laws

The protections provided by this section are independent of, and not subject to any limitations that may be provided in, the Whistleblower Protection Act of 1989 (Public Law 101-512)¹ or any other law that may provide protection for disclosures of information by employees of the Department of Energy or of a contractor of the Department.

(m) Annual report

(1) Not later than 30 days after the commencement of each fiscal year, the Director shall submit to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives a report on the in-

¹ See References in Text note below.

vestigations undertaken under subsection (j)(1)(B) during the preceding fiscal year, including a summary of the results of each such investigation.

(2) A report under paragraph (1) may not identify or otherwise provide any information about an individual submitting a complaint under this section without the consent of the individual.

(n) Implementation report

Not later than December 5, 1999, the Secretary shall submit to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives a report describing the implementation of the program required by this section.

(Pub. L. 107-314, div. D, title XLVI, §4602, formerly Pub. L. 106-65, div. C, title XXXI, §3164, Oct. 5, 1999, 113 Stat. 946; renumbered Pub. L. 107-314, div. D, title XLVI, §4602, and amended Pub. L. 108-136, div. C, title XXXI, §3141(i)(3), Nov. 24, 2003, 117 Stat. 1776.)

REFERENCES IN TEXT

The Whistleblower Protection Act of 1989, referred to in subsec. (l), is Pub. L. 101-12, Apr. 10, 1989, 103 Stat. 16, as amended, which enacted subchapters II (§1211 et seq.) and III (§1221 et seq.) of chapter 12 and section 3352 of Title 5, Government Organization and Employees, amended sections 1201 to 1206, 1209, 1211, 2302, 2303, 3393, 7502, 7512, 7521, 7542, 7701, and 7703 of Title 5 and section 4139 of Title 22, Foreign Relations and Intercourse, repealed sections 1207 and 1208 of Title 5, and enacted provisions set out as notes under sections 1201, 1211, and 5509 of Title 5. For complete classification of this Act to the Code, see Short Title of 1989 Amendment note set out under section 1201 of Title 5 and Tables.

CODIFICATION

Section was formerly classified to section 7239 of Title 42, The Public Health and Welfare, prior to renumbering by Pub. L. 108-136.

AMENDMENTS

2003—Subsec. (n). Pub. L. 108-136, §3141(i)(3)(D), substituted “December 5, 1999,” for “60 days after October 5, 1999,”.

§ 2703. Employee incentives for employees at closure project facilities

(a) Authority to provide incentives

Notwithstanding any other provision of law, the Secretary of Energy may provide to any eligible employee of the Department of Energy one or more of the incentives described in subsection (d).

(b) Eligible employees

An individual is an eligible employee of the Department of Energy for purposes of this section if the individual—

- (1) has worked continuously at a closure facility for at least two years;
- (2) is an employee (as that term is defined in section 2105(a) of title 5);
- (3) has a fully satisfactory or equivalent performance rating during the most recent performance period and is not subject to an adverse notice regarding conduct; and
- (4) meets any other requirement or condition under subsection (d) for the incentive which is provided the employee under this section.

(c) Closure facility defined

For purposes of this section, the term “closure facility” means a Department of Energy facility at which the Secretary is carrying out a closure project selected under section 2601 of this title.

(d) Incentives

The incentives that the Secretary may provide under this section are the following:

- (1) The right to accumulate annual leave provided by section 6303 of title 5 for use in succeeding years until it totals not more than 90 days, or not more than 720 hours based on a standard work week, at the beginning of the first full biweekly pay period, or corresponding period for an employee who is not paid on the basis of biweekly pay periods, occurring in a year, except that—

(A) any annual leave that remains unused when an employee transfers to a position in a department or agency of the Federal Government shall be liquidated upon the transfer by payment to the employee of a lump sum for leave in excess of 30 days, or in excess of 240 hours based on a standard work week; and

(B) upon separation from service, annual leave accumulated under this paragraph shall be treated as any other accumulated annual leave is treated.

- (2) The right to be paid a retention allowance in a lump sum in compliance with paragraphs (1) and (2) of section 5754(b)¹ of title 5 if the employee meets the requirements of section 5754(a)¹ of that title, except that the retention allowance may exceed 25 percent, but may not be more than 30 percent, of the employee's rate of basic pay.

(e) Agreement

An eligible employee of the Department of Energy provided an incentive under this section shall enter into an agreement with the Secretary to remain employed at the closure facility at which the employee is employed as of the date of the agreement until a specific date or for a specific period of time.

(f) Violation of agreement

(1) Except as provided under paragraph (3), an eligible employee of the Department of Energy who violates an agreement under subsection (e), or is dismissed for cause, shall forfeit eligibility for any incentives under this section as of the date of the violation or dismissal, as the case may be.

(2) Except as provided under paragraph (3), an eligible employee of the Department of Energy who is paid a retention allowance under subsection (d)(2) and who violates an agreement under subsection (e), or is dismissed for cause, before the end of the period or date of employment agreed upon under such agreement shall refund to the United States an amount that bears the same ratio to the aggregate amount so paid to or received by the employee as the unserved part of such employment bears to the total period of employment agreed upon under such agreement.

¹ See References in Text note below.

(3) The Secretary may waive the applicability of paragraph (1) or (2) to an employee otherwise covered by such paragraph if the Secretary determines that there is good and sufficient reason for the waiver.

(g) Report

The Secretary shall include in each report on a closure project under section 2601(h) of this title a report on the incentives, if any, provided under this section with respect to the project for the period covered by such report.

(h) Omitted

(i) Authority with respect to voluntary separations

(1) The Secretary may—

(A) separate from service any employee at a Department of Energy facility at which the Secretary is carrying out a closure project selected under section 2601 of this title who volunteers to be separated under this subparagraph even though the employee is not otherwise subject to separation due to a reduction in force; and

(B) for each employee voluntarily separated under subparagraph (A), retain an employee in a similar position who would otherwise be separated due to a reduction in force.

(2) The separation of an employee under paragraph (1)(A) shall be treated as an involuntary separation due to a reduction in force.

(3) An employee with critical knowledge and skills (as defined by the Secretary) may not participate in a voluntary separation under paragraph (1)(A) if the Secretary determines that such participation would impair the performance of the mission of the Department of Energy.

(j) Termination

The authority to provide incentives under this section terminates on March 31, 2007.

(Pub. L. 107-314, div. D, title XLVI, §4603, formerly Pub. L. 106-398, §1 [div. C, title XXXI, §3136], Oct. 30, 2000, 114 Stat. 1654, 1654A-458; renumbered Pub. L. 107-314, div. D, title XLVI, §4603, and amended Pub. L. 108-136, div. C, title XXXI, §3141(i)(4), Nov. 24, 2003, 117 Stat. 1777.)

REFERENCES IN TEXT

Section 5754 of title 5, referred to in subsec. (d)(2), was repealed and a new section 5754 relating to retention bonuses was enacted by Pub. L. 108-411, title I, §101(a)(1), Oct. 30, 2004, 118 Stat. 2305, 2307.

CODIFICATION

Section is comprised of section 4603 of Pub. L. 107-314. Subsec. (h) of section 4603 of Pub. L. 107-314 amended section 8905a of Title 5, Government Organization and Employees.

Section was formerly set out as a note under section 7274n of Title 42, The Public Health and Welfare, prior to renumbering by Pub. L. 108-136.

AMENDMENTS

2003—Subsec. (c). Pub. L. 108-136, §3141(i)(4)(D)(i), substituted “section 2601 of this title” for “section 3143 of the National Defense Authorization Act for Fiscal Year 1997 (42 U.S.C. 7274n)”.

Subsec. (g). Pub. L. 108-136, §3141(i)(4)(D)(ii), substituted “section 2601(h) of this title” for “section

3143(h) of the National Defense Authorization Act for Fiscal Year 1997”.

Subsec. (i)(1)(A). Pub. L. 108-136, §3141(i)(4)(D)(i), substituted “section 2601 of this title” for “section 3143 of the National Defense Authorization Act for Fiscal Year 1997 (42 U.S.C. 7274n)”.

§ 2704. Department of Energy defense nuclear facilities workforce restructuring plan

(a) In general

Upon determination that a change in the workforce at a defense nuclear facility is necessary, the Secretary of Energy shall develop a plan for restructuring the workforce for the defense nuclear facility that takes into account—

(1) the reconfiguration of the defense nuclear facility; and

(2) the plan for the nuclear weapons stockpile that is the most recently prepared plan at the time of the development of the plan referred to in this subsection.

(b) Consultation

(1) In developing a plan referred to in subsection (a) and any updates of the plan under subsection (e), the Secretary shall consult with the Secretary of Labor, appropriate representatives of local and national collective-bargaining units of individuals employed at Department of Energy defense nuclear facilities, appropriate representatives of departments and agencies of State and local governments, appropriate representatives of State and local institutions of higher education, and appropriate representatives of community groups in communities affected by the restructuring plan.

(2) The Secretary shall determine appropriate representatives of the units, governments, institutions, and groups referred to in paragraph (1).

(c) Objectives

In preparing the plan required under subsection (a), the Secretary shall be guided by the following objectives:

(1) Changes in the workforce at a Department of Energy defense nuclear facility—

(A) should be accomplished so as to minimize social and economic impacts;

(B) should be made only after the provision of notice of such changes not later than 120 days before the commencement of such changes to such employees and the communities in which such facilities are located; and

(C) should be accomplished, when possible, through the use of retraining, early retirement, attrition, and other options that minimize layoffs.

(2) Employees whose employment in positions at such facilities is terminated shall, to the extent practicable, receive preference in any hiring of the Department of Energy (consistent with applicable employment seniority plans or practices of the Department of Energy and with section 3152 of the National Defense Authorization Act for Fiscal Years 1990 and 1991 (Public Law 101-189; 103 Stat. 1682)).

(3) Employees shall, to the extent practicable, be retrained for work in environmental restoration and waste management activities at such facilities or other facilities of the Department of Energy.

(4) The Department of Energy should provide relocation assistance to employees who are transferred to other Department of Energy facilities as a result of the plan.

(5) The Department of Energy should assist terminated employees in obtaining appropriate retraining, education, and reemployment assistance (including employment placement assistance).

(6) The Department of Energy should provide local impact assistance to communities that are affected by the restructuring plan and coordinate the provision of such assistance with—

(A) programs carried out by the Secretary of Labor under title I of the Workforce Investment Act of 1998 [29 U.S.C. 2801 et seq.];

(B) programs carried out pursuant to the Defense Economic Adjustment, Diversification, Conversion, and Stabilization Act of 1990 (division D of Public Law 101-510; 10 U.S.C. 2391 note); and

(C) programs carried out by the Department of Commerce pursuant to title II of the Public Works and Economic Development Act of 1965 (42 U.S.C. 3141 et seq.).

(d) Implementation

The Secretary shall, subject to the availability of appropriations for such purpose, work on an ongoing basis with representatives of the Department of Labor, workforce bargaining units, and States and local communities in carrying out a plan required under subsection (a).

(e) Plan updates

Not later than one year after issuing a plan referred to in subsection (a) and on an annual basis thereafter, the Secretary shall issue an update of the plan. Each updated plan under this subsection shall—

(1) be guided by the objectives referred to in subsection (c), taking into account any changes in the function or mission of the Department of Energy defense nuclear facilities and any other changes in circumstances that the Secretary determines to be relevant;

(2) contain an evaluation by the Secretary of the implementation of the plan during the year preceding the report; and

(3) contain such other information and provide for such other matters as the Secretary determines to be relevant.

(f) Submittal to Congress

(1) The Secretary shall submit to Congress a plan referred to in subsection (a) with respect to a defense nuclear facility within 90 days after the date on which a notice of changes described in subsection (c)(1)(B) is provided to employees of the facility, or 90 days after the date of the enactment of this Act,¹ whichever is later.

(2) The Secretary shall submit to Congress any updates of the plan under subsection (e) immediately upon completion of any such update.

(g) Department of Energy defense nuclear facility defined

In this section, the term “Department of Energy defense nuclear facility” means—

(1) a production facility or utilization facility (as those terms are defined in section 2014 of title 42) that is under the control or jurisdiction of the Secretary and that is operated for national security purposes (including the tritium loading facility at Savannah River, South Carolina, the 236 H facility at Savannah River, South Carolina; and the Mound Laboratory, Ohio), but the term does not include any facility that does not conduct atomic energy defense activities and does not include any facility or activity covered by Executive Order Number 12344, dated February 1, 1982, pertaining to the naval nuclear propulsion program;

(2) a nuclear waste storage or disposal facility that is under the control or jurisdiction of the Secretary;

(3) a testing and assembly facility that is under the control or jurisdiction of the Secretary and that is operated for national security purposes (including the Nevada Test Site, Nevada; the Pinnellas Plant, Florida; and the Pantex facility, Texas);

(4) an atomic weapons research facility that is under the control or jurisdiction of the Secretary (including Lawrence Livermore, Los Alamos, and Sandia National Laboratories); or

(5) any facility described in paragraphs (1) through (4) that—

(A) is no longer in operation;

(B) was under the control or jurisdiction of the Department of Defense, the Atomic Energy Commission, or the Energy Research and Development Administration; and

(C) was operated for national security purposes.

(Pub. L. 107-314, div. D, title XLVI, §4604, formerly Pub. L. 102-484, div. C, title XXXI, §3161, Oct. 23, 1992, 106 Stat. 2644; Pub. L. 103-337, div. A, title X, §1070(c)(2), Oct. 5, 1994, 108 Stat. 2857; Pub. L. 105-277, div. A, §101(f) [title VIII, §405(d)(7)(A), (f)(6)(A)], Oct. 21, 1998, 112 Stat. 2681-337, 2681-419, 2681-430; Pub. L. 107-107, div. A, title X, §1048(h)(1), Dec. 28, 2001, 115 Stat. 1229; renumbered Pub. L. 107-314, div. D, title XLVI, §4604, and amended Pub. L. 108-136, div. C, title XXXI, §3141(i)(5), Nov. 24, 2003, 117 Stat. 1777.)

REFERENCES IN TEXT

Section 3152 of the National Defense Authorization Act for Fiscal Years 1990 and 1991, referred to in subsec. (c)(2), is section 3152 of Pub. L. 101-189, div. C, title XXXI, Nov. 29, 1989, 103 Stat. 1682, which is not classified to the Code.

The Workforce Investment Act of 1998, referred to in subsec. (c)(6)(A), is Pub. L. 105-220, Aug. 7, 1998, 112 Stat. 936, as amended. Title I of the Act is classified principally to chapter 30 (§2801 et seq.) of Title 29, Labor. For complete classification of this Act to the Code, see Short Title note set out under section 9201 of Title 20, Education, and Tables.

The Public Works and Economic Development Act of 1965, referred to in subsec. (c)(6)(C), is Pub. L. 89-136, Aug. 26, 1965, 79 Stat. 552, as amended. Title II of the Act is classified generally to subchapter II (§3141 et seq.) of chapter 38 of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 3121 of Title 42 and Tables.

The date of the enactment of this Act, referred to in subsec. (f)(1), meant Oct. 23, 1992, the date of enactment of Pub. L. 102-484, in this section as originally enacted.

¹ See References in Text note below.

As renumbered by Pub. L. 108-136, this section is now part of Pub. L. 107-314, which was approved Dec. 2, 2002.

Executive Order Number 12344, referred to in subsec. (g)(1), is set out as a note under section 2511 of this title.

CODIFICATION

Section was formerly classified to section 7274h of Title 42, The Public Health and Welfare, prior to renumbering by Pub. L. 108-136.

AMENDMENTS

2003—Subsec. (a). Pub. L. 108-136, § 3141(i)(5)(D)(i), struck out “(hereinafter in this subtitle referred to as the ‘Secretary’)” after “Secretary of Energy”.

Subsec. (g). Pub. L. 108-136, § 3141(i)(5)(D)(ii), added subsec. (g).

2001—Subsec. (c)(6)(C). Pub. L. 107-107 substituted “title II of the Public Works and Economic Development Act of 1965 (42 U.S.C. 3141 et seq.)” for “title IX of the Public Works and Economic Development Act of 1965 (42 U.S.C. 3241 et seq.)”.

1998—Subsec. (c)(6)(A). Pub. L. 105-277, § 101(f) [title VIII, § 405(f)(6)(A)], added subpar. (A) and struck out former subpar. (A) which read as follows: “programs carried out by the Secretary of Labor under the Job Training Partnership Act or title I of the Workforce Investment Act of 1998;”.

Pub. L. 105-277, § 101(f) [title VIII, § 405(d)(7)(A)], added subpar. (A) and struck out former subpar. (A) which read as follows: “programs carried out by the Department of Labor pursuant to the Job Training Partnership Act (29 U.S.C. 1501 et seq.);”.

1994—Pub. L. 103-337, § 1070(c)(2)(B), substituted “workforce” for “work force” in section catchline.

Subsec. (a). Pub. L. 103-337, § 1070(c)(2)(A), substituted “workforce for” for “work force for” in introductory provisions.

Subsec. (c)(1). Pub. L. 103-337, § 1070(c)(2)(A), substituted “workforce” for “work force” in introductory provisions.

Subsec. (c)(6)(B). Pub. L. 103-337, § 1070(c)(2)(C), substituted “division D” for “Part D”.

Subsec. (d). Pub. L. 103-337, § 1070(c)(2)(A), substituted “workforce” for “work force”.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by section 101(f) [title VIII, § 405(d)(7)(A)] of Pub. L. 105-277 effective Oct. 21, 1998, and amendment by section 101(f) [title VIII, § 405(f)(6)(A)] of Pub. L. 105-277 effective July 1, 2000, see section 101(f) [title VIII, § 405(g)(1), (2)(B)] of Pub. L. 105-277, set out as a note under section 3502 of Title 5, Government Organization and Employees.

EFFECTIVE DATE OF 1994 AMENDMENT

Section 1070(c) of Pub. L. 103-337 provided that the amendment made by that section is effective as of Oct. 23, 1992, and as if included in the National Defense Authorization Act for Fiscal Year 1993, Pub. L. 102-484, as enacted.

§ 2705. Authority to provide certificate of commendation to Department of Energy and contractor employees for exemplary service in stockpile stewardship and security

(a) Authority to present certificate of commendation

The Secretary of Energy may present a certificate of commendation to any current or former employee of the Department of Energy, and any current or former employee of a Department contractor, whose service to the Department in matters relating to stockpile stewardship and security assisted the Department in furthering the national security interests of the United States.

(b) Certificate

The certificate of commendation presented to a current or former employee under subsection (a) shall include an appropriate citation of the service of the current or former employee described in that subsection, including a citation for dedication, intellect, and sacrifice in furthering the national security interests of the United States by maintaining a strong, safe, and viable United States nuclear deterrent during the Cold War or thereafter.

(c) Department of Energy defined

For purposes of this section, the term “Department of Energy” includes any predecessor agency of the Department of Energy.

(Pub. L. 107-314, div. D, title XLVI, § 4605, formerly Pub. L. 106-398, § 1 [div. C, title XXXI, § 3195], Oct. 30, 2000, 114 Stat. 1654, 1654A-481; renumbered Pub. L. 107-314, div. D, title XLVI, § 4605, by Pub. L. 108-136, div. C, title XXXI, § 3141(i)(6), Nov. 24, 2003, 117 Stat. 1778.)

CODIFICATION

Section was formerly set out as a note under section 2121 of Title 42, The Public Health and Welfare, prior to renumbering by Pub. L. 108-136.

PART B—EDUCATION AND TRAINING

§ 2721. Executive management training in Department of Energy

(a) Establishment of training program

The Secretary of Energy shall establish and implement a management training program for personnel of the Department of Energy involved in the management of atomic energy defense activities.

(b) Training provisions

The training program shall at a minimum include instruction in the following areas:

(1) Department of Energy policy and procedures for management and operation of atomic energy defense facilities.

(2) Methods of evaluating technical performance.

(3) Federal and State environmental laws and requirements for compliance with such environmental laws, including timely compliance with reporting requirements in such laws.

(4) The establishment of program milestones and methods to evaluate success in meeting such milestones.

(5) Methods for conducting long-range technical and budget planning.

(6) Procedures for reviewing and applying innovative technology to environmental restoration and defense waste management.

(Pub. L. 107-314, div. D, title XLVI, § 4621, formerly Pub. L. 101-189, div. C, title XXXI, § 3142, Nov. 29, 1989, 103 Stat. 1680; renumbered Pub. L. 107-314, div. D, title XLVI, § 4621, and amended Pub. L. 108-136, div. C, title XXXI, § 3141(i)(8), Nov. 24, 2003, 117 Stat. 1778.)

CODIFICATION

Section was formerly classified to section 7236 of Title 42, The Public Health and Welfare, prior to renumbering by Pub. L. 108-136.

AMENDMENTS

2003—Pub. L. 108-136, §3141(i)(8)(D), made technical amendment to section catchline.

§ 2722. Stockpile stewardship recruitment and training program

(a) Conduct of program

(1) As part of the stockpile stewardship program established pursuant to section 2521 of this title, the Secretary of Energy shall conduct a stockpile stewardship recruitment and training program at the Sandia National Laboratories, the Lawrence Livermore National Laboratory, and the Los Alamos National Laboratory.

(2) The recruitment and training program shall be conducted in coordination with the Chairman of the Joint Nuclear Weapons Council established by section 179 of title 10 and the directors of the laboratories referred to in paragraph (1).

(b) Support of dual-use programs

(1) As part of the recruitment and training program, the directors of the laboratories referred to in subsection (a)(1) may employ undergraduate students, graduate students, and postdoctoral fellows to carry out research sponsored by such laboratories for military or non-military dual-use programs related to nuclear weapons stockpile stewardship.

(2) Of the amounts authorized to be appropriated to the Secretary of Energy in section 3101(a)(1) of the National Defense Authorization Act for Fiscal Year 1995 (Public Law 103-337) for weapons activities for core research and development and allocated by the Secretary for education initiatives, \$5,000,000 shall be available for employing students and fellows to carry out research referred to in paragraph (1). The amount available under this paragraph shall be allocated equally among the laboratories referred to in subsection (a)(1).

(c) Establishment of retiree corps

As part of the training and recruitment program, the Secretary, in coordination with the directors of the laboratories referred to in subsection (a)(1), shall establish for the laboratories a retiree corps of retired scientists who have expertise in research and development of nuclear weapons. The directors may employ the retired scientists on a part-time basis to provide appropriate assistance on nuclear weapons issues, to contribute relevant information to be archived, and to help to provide training to other scientists.

(d) Report

(1) Not later than February 1, 1995, the Secretary shall submit to the Committees on Armed Services of the Senate and House of Representatives a report on the demographic trends of the personnel of the laboratories referred to in subsection (a)(1) and on actions taken by the Department of Energy to remedy identified deficiencies in various skill areas.

(2) The report shall be prepared in coordination with the Chairman of the Joint Nuclear Weapons Council and the directors of the laboratories. Information included in the report shall be aggregated and compiled into statistical categories.

(3) The report shall include the following:

(A) An inventory of the weapons-related tasks that the laboratories need to perform to support their nuclear weapons responsibilities.

(B) An inventory of the skills necessary to complete the weapons-related tasks referred to in subparagraph (A).

(C) For each laboratory, the number of scientists needed in each skill area to perform such tasks.

(D) The number of the scientists providing services in each skill area at each laboratory, stated by age.

(E) An assessment of which skill areas are understaffed.

(F) The number of scientists entering the weapons program at each laboratory, and their skill areas.

(G) The number of full-time equivalent personnel with weapon skills, their distribution by skill and, for each such skill, their distribution by age.

(H) The number of scientists retiring from the weapons program in the five-year period ending on the date of the report and the skill areas in which they worked in the year preceding their retirement.

(I) Based on the information contained in subparagraphs (A) through (H), a projection of the skills areas that will become understaffed in the five years following the date of the report.

(J) A statement of alternative actions that may be taken to retain and recruit scientists for the weapons programs at the laboratories in order to preserve a sufficient skill base and to fulfill stockpile stewardship responsibilities.

(K) Any plans of the Secretary to take any of the alternative actions referred to in subparagraph (J).

(Pub. L. 107-314, div. D, title XLVI, §4622, formerly Pub. L. 103-337, div. C, title XXXI, §3131, Oct. 5, 1994, 108 Stat. 3085; renumbered Pub. L. 107-314, div. D, title XLVI, §4622, and amended Pub. L. 108-136, div. C, title XXXI, §3141(i)(9), Nov. 24, 2003, 117 Stat. 1778.)

REFERENCES IN TEXT

Section 3101(a)(1) of the National Defense Authorization Act for Fiscal Year 1995, referred to in subsec. (b)(2), is section 3101(a)(1) of Pub. L. 103-337, div. C, title XXXI, Oct. 5, 1994, 108 Stat. 3074, which is not classified to the Code.

AMENDMENTS

2003—Subsec. (a)(1). Pub. L. 108-136, §3141(i)(9)(D)(i), substituted “section 2521 of this title” for “section 3138 of the National Defense Authorization Act for Fiscal Year 1994 (Public Law 103-160; 107 Stat. 1946; 42 U.S.C. 2121 note)”.

Subsec. (b)(2). Pub. L. 108-136, §3141(i)(9)(D)(ii), inserted “of the National Defense Authorization Act for Fiscal Year 1995 (Public Law 103-337)” after “section 3101(a)(1)”.

§ 2723. Fellowship program for development of skills critical to the Department of Energy nuclear weapons complex

(a) In general

The Secretary of Energy shall conduct a fellowship program for the development of skills

critical to the ongoing mission of the Department of Energy nuclear weapons complex. Under the fellowship program, the Secretary shall provide educational assistance and research assistance to eligible individuals to facilitate the development by such individuals of skills critical to maintaining the ongoing mission of the Department of Energy nuclear weapons complex.

(b) Eligible individuals

Individuals eligible for participation in the fellowship program are United States citizens who are the following:

- (1) Students pursuing graduate degrees in fields of science or engineering that are related to nuclear weapons engineering or to the science and technology base of the Department of Energy.
- (2) Individuals engaged in postdoctoral studies in such fields.

(c) Covered facilities

The Secretary shall carry out the fellowship program at or in connection with the following facilities:

- (1) The Kansas City Plant, Kansas City, Missouri.
- (2) The Pantex Plant, Amarillo, Texas.
- (3) The Y-12 Plant, Oak Ridge, Tennessee.
- (4) The Savannah River Site, Aiken, South Carolina.
- (5) The Lawrence Livermore National Laboratory, Livermore, California.
- (6) The Los Alamos National Laboratory, Los Alamos, New Mexico.
- (7) The Sandia National Laboratories, Albuquerque, New Mexico, and Livermore, California.

(d) Administration

The Secretary shall carry out the fellowship program at a facility referred to in subsection (c) through the stockpile manager of the facility.

(e) Allocation of funds

The Secretary shall, in consultation with the Assistant Secretary of Energy for Defense Programs, allocate funds available for the fellowship program under subsection (f) among the facilities referred to in subsection (c). The Secretary shall make the allocation after evaluating an assessment by the weapons program director of each such facility of the personnel and critical skills necessary at the facility for carrying out the ongoing mission of the facility.

(f) Agreement

(1) The Secretary may allow an individual to participate in the program only if the individual signs an agreement described in paragraph (2).

(2) An agreement referred to in paragraph (1) shall be in writing, shall be signed by the participant, and shall include the participant's agreement to serve, after completion of the course of study for which the assistance was provided, as a full-time employee in a position in the Department of Energy for a period of time to be established by the Secretary of Energy of not less than one year, if such a position is offered to the participant.

(Pub. L. 107-314, div. D, title XLVI, §4623, formerly Pub. L. 104-106, div. C, title XXXI, §3140,

Feb. 10, 1996, 110 Stat. 621; Pub. L. 106-65, div. C, title XXXI, §3162(a)-(d), Oct. 5, 1999, 113 Stat. 943; renumbered Pub. L. 107-314, div. D, title XLVI, §4623, by Pub. L. 108-136, div. C, title XXXI, §3141(i)(10), Nov. 24, 2003, 117 Stat. 1779.)

CODIFICATION

Section was formerly set out as a note under section 2121 of Title 42, The Public Health and Welfare, prior to renumbering by Pub. L. 108-136.

AMENDMENTS

1999—Subsec. (a). Pub. L. 106-65, §3162(a), substituted “Secretary shall” for “Secretary shall—”, struck out par. (1) designation before “provide educational assistance”, and struck out pars. (2) and (3) which read as follows:

“(2) employ eligible individuals at the facilities described in subsection (c) in order to facilitate the development of such skills by these individuals; or

“(3) provide eligible individuals with the assistance and the employment.”

Subsec. (b). Pub. L. 106-65, §3162(b), inserted “are United States citizens who” after “program” in introductory provisions.

Subsec. (c)(5) to (7). Pub. L. 106-65, §3162(c), added pars. (5) to (7).

Subsec. (f). Pub. L. 106-65, §3162(d), amended heading and text of subsec. (f) generally. Prior to amendment, text read as follows: “Of the funds authorized to be appropriated to the Department of Energy for fiscal year 1996 under section 3101(b), \$10,000,000 may be used for the purpose of carrying out the fellowship program under this section.”

PART C—WORKER SAFETY

§ 2731. Worker protection at nuclear weapons facilities

(a) Training grant program

(1) The Secretary of Energy is authorized to award grants to organizations referred to in paragraph (2) in order for such organizations—

(A) to provide training and education to persons who are or may be engaged in hazardous substance response or emergency response at Department of Energy nuclear weapons facilities; and

(B) to develop curricula for such training and education.

(2)(A) Subject to subparagraph (B), the Secretary is authorized to award grants under paragraph (1) to non-profit organizations that have demonstrated (as determined by the Secretary) capabilities in—

(i) implementing and conducting effective training and education programs relating to the general health and safety of workers; and

(ii) identifying, and involving in training, groups of workers whose duties include hazardous substance response or emergency response.

(B) The Secretary shall give preference in the award of grants under this section to employee organizations and joint labor-management training programs that are grant recipients under section 9660a of title 42.

(3) An organization awarded a grant under paragraph (1) shall carry out training, education, or curricula development pursuant to Department of Energy orders relating to employee safety training, including orders numbered 5480.4 and 5480.11.

(b) Enforcement of employee safety standards

(1) Subject to paragraph (2), the Secretary shall assess civil penalties against any contractor of the Department of Energy who (as determined by the Secretary)—

(A) employs individuals who are engaged in hazardous substance response or emergency response at Department of Energy nuclear weapons facilities; and

(B) fails (i) to provide for the training of such individuals to carry out such hazardous substance response or emergency response, or (ii) to certify to the Department of Energy that such employees are adequately trained for such response pursuant to orders issued by the Department of Energy relating to employee safety training (including orders numbered 5480.4 and 5480.11).

(2) Civil penalties assessed under this subsection may not exceed \$5,000 for each day in which a failure referred to in paragraph (1)(B) occurs.

(c) Regulations

The Secretary shall prescribe regulations to carry out this section.

(d) Definitions

For the purposes of this section, the term “hazardous substance” includes radioactive waste and mixed radioactive and hazardous waste.

(e) Funding

Of the funds authorized to be appropriated pursuant to section 3101(9)(A) of the National Defense Authorization Act for Fiscal Years 1992 and 1993 (Public Law 102-190), \$10,000,000 may be used for the purpose of carrying out this section.

(Pub. L. 107-314, div. D, title XLVI, §4641, formerly Pub. L. 102-190, div. C, title XXXI, §3131, Dec. 5, 1991, 105 Stat. 1571; renumbered Pub. L. 107-314, div. D, title XLVI, §4641, and amended Pub. L. 108-136, div. C, title XXXI, §3141(i)(12), Nov. 24, 2003, 117 Stat. 1779.)

REFERENCES IN TEXT

Section 3101(9)(A) of the National Defense Authorization Act for Fiscal Years 1992 and 1993, referred to in subsec. (e), is section 3101(9)(A) of Pub. L. 102-190, div. C, title XXXI, Dec. 5, 1991, 105 Stat. 1564, which is not classified to the Code.

CODIFICATION

Section was formerly classified to section 7274d of Title 42, The Public Health and Welfare, prior to renumbering by Pub. L. 108-136.

AMENDMENTS

2003—Subsec. (e). Pub. L. 108-136, §3141(i)(12)(D), inserted “of the National Defense Authorization Act for Fiscal Years 1992 and 1993 (Public Law 102-190)” after “section 3101(9)(A)”.

§ 2732. Safety oversight and enforcement at defense nuclear facilities**(a) Safety at defense nuclear facilities**

The Secretary of Energy shall take appropriate actions to ensure that—

(1) officials of the Department of Energy who are responsible for independent oversight

of matters relating to nuclear safety at defense nuclear facilities and enforcement of nuclear safety standards at such facilities maintain independence from officials who are engaged in, or who are advising persons who are engaged in, management of such facilities;

(2) the independent, internal oversight functions carried out by the Department include activities relating to—

(A) the assessment of the safety of defense nuclear facilities;

(B) the assessment of the effectiveness of Department program offices in carrying out programs relating to the environment, safety, health, and security at defense nuclear facilities;

(C) the provision to the Secretary of oversight reports that—

(i) contain validated technical information; and

(ii) provide a clear analysis of the extent to which line programs governing defense nuclear facilities meet applicable goals for the environment, safety, health, and security at such facilities; and

(D) the development of clear performance standards to be used in assessing the adequacy of the programs referred to in subparagraph (C)(ii);

(3) the Department has a system for bringing issues relating to nuclear safety at defense nuclear facilities to the attention of the officials of the Department (including the Secretary of Energy) who have authority to resolve such issues in an adequate and timely manner; and

(4) an adequate number of qualified personnel of the Department are assigned to oversee matters relating to nuclear safety at defense nuclear facilities and enforce nuclear safety standards at such facilities.

(b) Report

Not later than January 5, 1995, the Secretary shall submit to Congress a report describing the following:

(1) The actions that the Secretary has taken or will take to fulfill the requirements set forth in paragraphs (1), (2), and (3) of subsection (a).

(2) The actions in addition to the actions described under paragraph (1) that the Secretary could take in order to fulfill such requirements.

(3) The respective roles with regard to nuclear safety at defense nuclear facilities of the following officials:

(A) The Associate Deputy Secretary of Energy for Field Management.

(B) The Assistant Secretary of Energy for Defense Programs.

(C) The Assistant Secretary of Energy for Environmental Restoration and Waste Management.

(Pub. L. 107-314, div. D, title XLVI, §4642, formerly Pub. L. 103-337, div. C, title XXXI, §3163, Oct. 5, 1994, 108 Stat. 3097; renumbered Pub. L. 107-314, div. D, title XLVI, §4642, and amended Pub. L. 108-136, div. C, title XXXI, §3141(i)(13), Nov. 24, 2003, 117 Stat. 1779.)

CODIFICATION

Section was formerly classified to section 7274m of Title 42, The Public Health and Welfare, prior to renumbering by Pub. L. 108-136.

AMENDMENTS

2003—Subsec. (b). Pub. L. 108-136, §3141(i)(13)(D), substituted “January 5, 1995,” for “90 days after October 5, 1994.”.

§ 2733. Program to monitor Department of Energy workers exposed to hazardous and radioactive substances

(a) In general

The Secretary shall establish and carry out a program for the identification and on-going medical evaluation of current and former Department of Energy employees who are subject to significant health risks as a result of the exposure of such employees to hazardous or radioactive substances during such employment.

(b) Implementation of program

(1) The Secretary shall, with the concurrence of the Secretary of Health and Human Services, issue regulations under which the Secretary shall implement the program. Such regulations shall, to the extent practicable, provide for a process to—

(A) identify the hazardous substances and radioactive substances to which current and former Department of Energy employees may have been exposed as a result of such employment;

(B) identify employees referred to in subparagraph (A) who received a level of exposure identified under paragraph (2)(B);

(C) determine the appropriate number, scope, and frequency of medical evaluations and laboratory tests to be provided to employees who have received a level of exposure identified under paragraph (2)(B) to permit the Secretary to evaluate fully the extent, nature, and medical consequences of such exposure;

(D) make available the evaluations and tests referred to in subparagraph (C) to the employees referred to in such subparagraph;

(E) ensure that privacy is maintained with respect to medical information that personally identifies any such employee; and

(F) ensure that employee participation in the program is voluntary.

(2)(A) In determining the most appropriate means of carrying out the activities referred to in subparagraphs (A) through (D) of paragraph (1), the Secretary shall consult with the Secretary of Health and Human Services under the agreement referred to in subsection (c).

(B) The Secretary of Health and Human Services, with the assistance of the Director of the Centers for Disease Control and the Director of the National Institute for Occupational Safety and Health, and the Secretary of Labor shall identify the levels of exposure to the substances referred to in subparagraph (A) of paragraph (1) that present employees referred to in such subparagraph with significant health risks under Federal and State occupational, health, and safety standards;

(3) In prescribing the guidelines referred to in paragraph (1), the Secretary shall consult with representatives of the following entities:

(A) The American College of Occupational and Environmental Medicine.

(B) The National Academy of Sciences.

(C) The National Council on Radiation Protection.

(D) Any labor organization or other collective bargaining agent authorized to act on the behalf of employees of a Department of Energy defense nuclear facility.

(4) The Secretary shall provide for each employee identified under paragraph (1)(D) and provided with any medical examination or test under paragraph (1)(E) to be notified by the appropriate medical personnel of the identification and the results of any such examination or test. Each notification under this paragraph shall be provided in a form that is readily understandable by the employee.

(5) The Secretary shall collect and assemble information relating to the examinations and tests carried out under paragraph (1)(E).

(6) The Secretary shall commence carrying out the program described in this subsection not later than October 23, 1993.

(c) Agreement with Secretary of Health and Human Services

Not later than April 23, 1993, the Secretary shall enter into an agreement with the Secretary of Health and Human Services relating to the establishment and conduct of the program required and regulations issued under this section.

(d) Definitions

In this section:

(1) The term “Department of Energy defense nuclear facility” has the meaning given that term in section 2704(g) of this title.

(2) The term “Department of Energy employee” means any employee of the Department of Energy employed at a Department of Energy defense nuclear facility, including any employee of a contractor or subcontractor of the Department of Energy employed at such a facility.

(Pub. L. 107-314, div. D, title XLVI, §4643, formerly Pub. L. 102-484, div. C, title XXXI, §3162, Oct. 23, 1992, 106 Stat. 2646; renumbered Pub. L. 107-314, div. D, title XLVI, §4643, and amended Pub. L. 108-136, div. C, title XXXI, §3141(i)(14), Nov. 24, 2003, 117 Stat. 1779.)

CODIFICATION

Section was formerly classified to section 7274i of Title 42, The Public Health and Welfare, prior to renumbering by Pub. L. 108-136.

AMENDMENTS

2003—Subsec. (b)(6). Pub. L. 108-136, §3141(i)(14)(D)(i), substituted “October 23, 1993” for “1 year after October 23, 1992”.

Subsec. (c). Pub. L. 108-136, §3141(i)(14)(D)(ii), substituted “April 23, 1993,” for “180 days after October 23, 1992,”.

Subsec. (d). Pub. L. 108-136, §3141(i)(14)(D)(iii), added subsec. (d).

CHANGE OF NAME

Centers for Disease Control changed to Centers for Disease Control and Prevention by Pub. L. 102-531, title III, §312, Oct. 27, 1992, 106 Stat. 3504.

§ 2734. Programs for persons who may have been exposed to radiation released from Hanford Nuclear Reservation

(a) Funding

Of the funds authorized to be appropriated to the Department of Energy under title XXXI of the National Defense Authorization Act for Fiscal Year 1991 (Public Law 101-510), the Secretary of Energy shall make available \$3,000,000 to the State of Washington, \$1,000,000 to the State of Oregon, and \$1,000,000 to the State of Idaho. Such funds shall be used to develop and implement programs for the benefit of persons who may have been exposed to radiation released from the Department of Energy Hanford Nuclear Reservation (Richland, Washington) between the years 1944 and 1972.

(b) Programs

The programs to be developed by the States may include only the following activities:

- (1) Preparing and distributing information on the health effects of radiation to health care professionals, and to persons who may have been exposed to radiation.
- (2) Developing and implementing mechanisms for referring persons who may have been exposed to radiation to health care professionals with expertise in the health effects of radiation.
- (3) Evaluating and, if feasible, implementing, registration and monitoring of persons who may have been exposed to radiation released from the Hanford Nuclear Reservation.

(c) Plan and reports

(1) The States of Washington, Oregon, and Idaho shall jointly develop a single plan for implementing this section.

(2) Not later than May 5, 1991, such States shall submit to the Secretary of Energy and the Congress a copy of the plan developed under paragraph (1).

(3) Not later than May 5, 1992, such States shall submit to the Secretary of Energy and the Congress a single report on the implementation of the plan developed under paragraph (1).

(4) In developing and implementing the plan, such States shall consult with persons carrying out current radiation dose and epidemiological research programs (including the Hanford Thyroid Disease Study of the Centers for Disease Control and the Hanford Environmental Dose Reconstruction Project of the Department of Energy), and may not cause substantial damage to such research programs.

(d) Prohibition on disclosure of exposure information

(1) Except as provided in paragraph (2), a person may not disclose to the public the following:

- (A) Any information obtained through a program that identifies a person who may have been exposed to radiation released from the Hanford Nuclear Reservation.
- (B) Any information obtained through a program that identifies a person participating in any of the programs developed under this section.
- (C) The name, address, and telephone number of a person requesting information referred to in subsection (b)(1).

(D) The name, address, and telephone number of a person who has been referred to a health care professional under subsection (b)(2).

(E) The name, address, and telephone number of a person who has been registered and monitored pursuant to subsection (b)(3).

(F) Information that identifies the person from whom information referred to in this paragraph was obtained under a program or any other third party involved with, or identified by, any such information so obtained.

(G) Any other personal or medical information that identifies a person or party referred to in subparagraphs (A) through (F).

(H) Such other information or categories of information as the chief officers of the health departments of the States of Washington, Oregon, and Idaho jointly designate as information covered by this subsection.

(2) Information referred to in paragraph (1) may be disclosed to the public if the person identified by the information, or the legal representative of that person, has consented in writing to the disclosure.

(3) The States of Washington, Oregon, and Idaho shall establish uniform procedures for carrying out this subsection, including procedures governing the following:

- (A) The disclosure of information under paragraph (2).
- (B) The use of the Hanford Health Information Network database.
- (C) The future disposition of the database.
- (D) Enforcement of the prohibition provided in paragraph (1) on the disclosure of information described in that paragraph.

(Pub. L. 107-314, div. D, title XLVI, §4644, formerly Pub. L. 101-510, div. C, title XXXI, §3138, Nov. 5, 1990, 104 Stat. 1834; Pub. L. 103-337, div. C, title XXXI, §3138(b), Oct. 5, 1994, 108 Stat. 3087; renumbered Pub. L. 107-314, div. D, title XLVI, §4644, and amended Pub. L. 108-136, div. C, title XXXI, §3141(i)(15), Nov. 24, 2003, 117 Stat. 1780.)

REFERENCES IN TEXT

Title XXXI of the National Defense Authorization Act for Fiscal Year 1991, referred to in subsec. (a), is title XXXI of div. C of Pub. L. 101-510, Nov. 5, 1990, 104 Stat. 1824, as amended. For complete classification of title XXXI to the Code, see Tables.

AMENDMENTS

2003—Pub. L. 108-136, §3141(i)(15)(D)(i), made technical amendment to section catchline.

Subsec. (a). Pub. L. 108-136, §3141(i)(15)(D)(ii), substituted “title XXXI of the National Defense Authorization Act for Fiscal Year 1991 (Public Law 101-510)” for “this title”.

Subsec. (c)(2). Pub. L. 108-136, §3141(i)(15)(D)(iii)(I), substituted “May 5, 1991,” for “six months after the date of the enactment of this Act.”

Subsec. (c)(3). Pub. L. 108-136, §3141(i)(15)(D)(iii)(II), substituted “May 5, 1992,” for “18 months after the date of the enactment of this Act.”

1994—Subsec. (d). Pub. L. 103-337 added subsec. (d).

CHANGE OF NAME

Centers for Disease Control changed to Centers for Disease Control and Prevention by Pub. L. 102-531, title III, §312, Oct. 27, 1992, 106 Stat. 3504.

SUBCHAPTER VII—BUDGET AND
FINANCIAL MANAGEMENT MATTERS

PART A—RECURRING NATIONAL SECURITY
AUTHORIZATION PROVISIONS

§ 2741. Definitions

In this part:

(1) The term “DOE national security authorization” means an authorization of appropriations for activities of the Department of Energy in carrying out programs necessary for national security.

(2) The term “congressional defense committees” means—

(A) the Committee on Armed Services and the Committee on Appropriations of the Senate; and

(B) the Committee on Armed Services and the Committee on Appropriations of the House of Representatives.

(3) The term “minor construction threshold” means \$5,000,000.

(Pub. L. 107–314, div. D, title XLVII, § 4701, formerly div. C, title XXXVI, § 3620, Dec. 2, 2002, 116 Stat. 2756; renumbered div. D, title XLVII, § 4701, by Pub. L. 108–136, div. C, title XXXI, § 3141(j)(2)(A)–(C), Nov. 24, 2003, 117 Stat. 1781.)

CODIFICATION

Section was formerly classified to section 7386 of Title 42, The Public Health and Welfare, prior to renumbering by Pub. L. 108–136.

§ 2742. Reprogramming

(a) In general

Except as provided in subsection (b) and in sections 2750 and 2751 of this title, the Secretary of Energy may not use amounts appropriated pursuant to a DOE national security authorization for a program—

(1) in amounts that exceed, in a fiscal year—

(A) 115 percent of the amount authorized for that program by that authorization for that fiscal year; or

(B) \$5,000,000 more than the amount authorized for that program by that authorization for that fiscal year; or

(2) which has not been presented to, or requested of, Congress.

(b) Exception where notice-and-wait given

An action described in subsection (a) may be taken if—

(1) the Secretary submits to the congressional defense committees a report referred to in subsection (c) with respect to such action; and

(2) a period of 30 days has elapsed after the date on which such committees receive the report.

(c) Report

The report referred to in subsection (a) is a report containing a full and complete statement of the action proposed to be taken and the facts and circumstances relied upon in support of the proposed action.

(d) Computation of days

In the computation of the 30-day period under subsection (b), there shall be excluded any day

on which either House of Congress is not in session because of an adjournment of more than three days to a day certain.

(e) Limitations

(1) Total amount obligated

In no event may the total amount of funds obligated pursuant to a DOE national security authorization for a fiscal year exceed the total amount authorized to be appropriated by that authorization for that fiscal year.

(2) Prohibited items

Funds appropriated pursuant to a DOE national security authorization may not be used for an item for which Congress has specifically denied funds.

(Pub. L. 107–314, div. D, title XLVII, § 4702, formerly div. C, title XXXVI, § 3621, Dec. 2, 2002, 116 Stat. 2757; renumbered div. D, title XLVII, § 4702, and amended Pub. L. 108–136, div. C, title XXXI, § 3141(j)(2)(A)–(D)(i), Nov. 24, 2003, 117 Stat. 1781.)

CODIFICATION

Section was formerly classified to section 7386a of Title 42, The Public Health and Welfare, prior to renumbering by Pub. L. 108–136.

AMENDMENTS

2003—Subsec. (a). Pub. L. 108–136, § 3141(j)(2)(D)(i), in introductory provisions, made technical amendment to reference in original act which appears in text as reference to sections 2750 and 2751 of this title.

§ 2743. Minor construction projects

(a) Authority

Using operation and maintenance funds or facilities and infrastructure funds authorized by a DOE national security authorization, the Secretary of Energy may carry out minor construction projects.

(b) Annual report

The Secretary shall submit to the congressional defense committees on an annual basis a report on each exercise of the authority in subsection (a) during the preceding fiscal year. Each report shall provide a brief description of each minor construction project covered by the report.

(c) Cost variation reports to congressional committees

If, at any time during the construction of any minor construction project authorized by a DOE national security authorization, the estimated cost of the project is revised and the revised cost of the project exceeds the minor construction threshold, the Secretary shall immediately submit to the congressional defense committees a report explaining the reasons for the cost variation.

(d) Minor construction project defined

In this section, the term “minor construction project” means any plant project not specifically authorized by law for which the approved total estimated cost does not exceed the minor construction threshold.

(Pub. L. 107–314, div. D, title XLVII, § 4703, formerly div. C, title XXXVI, § 3622, Dec. 2, 2002, 116 Stat. 2757; renumbered div. D, title XLVII, § 4703,

by Pub. L. 108-136, div. C, title XXXI, §3141(j)(2)(A)–(C), Nov. 24, 2003, 117 Stat. 1781.)

CODIFICATION

Section was formerly classified to section 7386b of Title 42, The Public Health and Welfare, prior to renumbering by Pub. L. 108-136.

§ 2744. Limits on construction projects

(a) Construction cost ceiling

Except as provided in subsection (b), construction on a construction project which is in support of national security programs of the Department of Energy and was authorized by a DOE national security authorization may not be started, and additional obligations in connection with the project above the total estimated cost may not be incurred, whenever the current estimated cost of the construction project exceeds by more than 25 percent the higher of—

- (1) the amount authorized for the project; or
- (2) the amount of the total estimated cost for the project as shown in the most recent budget justification data submitted to Congress.

(b) Exception where notice-and-wait given

An action described in subsection (a) may be taken if—

- (1) the Secretary of Energy has submitted to the congressional defense committees a report on the actions and the circumstances making such action necessary; and
- (2) a period of 30 days has elapsed after the date on which the report is received by the committees.

(c) Computation of days

In the computation of the 30-day period under subsection (b), there shall be excluded any day on which either House of Congress is not in session because of an adjournment of more than three days to a day certain.

(d) Exception for minor projects

Subsection (a) does not apply to a construction project with a current estimated cost of less than the minor construction threshold.

(Pub. L. 107-314, div. D, title XLVII, §4704, formerly div. C, title XXXVI, §3623, Dec. 2, 2002, 116 Stat. 2758; renumbered div. D, title XLVII, §4704, by Pub. L. 108-136, div. C, title XXXI, §3141(j)(2)(A)–(C), Nov. 24, 2003, 117 Stat. 1781.)

CODIFICATION

Section was formerly classified to section 7386c of Title 42, The Public Health and Welfare, prior to renumbering by Pub. L. 108-136.

§ 2745. Fund transfer authority

(a) Transfer to other Federal agencies

The Secretary of Energy may transfer funds authorized to be appropriated to the Department of Energy pursuant to a DOE national security authorization to other Federal agencies for the performance of work for which the funds were authorized. Funds so transferred may be merged with and be available for the same purposes and for the same time period as the authorizations of the Federal agency to which the amounts are transferred.

(b) Transfer within Department of Energy

(1) Transfers permitted

Subject to paragraph (2), the Secretary of Energy may transfer funds authorized to be appropriated to the Department of Energy pursuant to a DOE national security authorization to any other DOE national security authorization. Amounts of authorizations so transferred may be merged with and be available for the same purposes and for the same period as the authorization to which the amounts are transferred.

(2) Maximum amounts

Not more than 5 percent of any such authorization may be transferred to another authorization under paragraph (1). No such authorization may be increased or decreased by more than 5 percent by a transfer under such paragraph.

(c) Limitations

The authority provided by this subsection to transfer authorizations—

- (1) may be used only to provide funds for items relating to activities necessary for national security programs that have a higher priority than the items from which the funds are transferred; and
- (2) may not be used to provide funds for an item for which Congress has specifically denied funds.

(d) Notice to Congress

The Secretary of Energy shall promptly notify the congressional defense committees of any transfer of funds to or from any DOE national security authorization.

(Pub. L. 107-314, div. D, title XLVII, §4705, formerly div. C, title XXXVI, §3624, Dec. 2, 2002, 116 Stat. 2758; renumbered div. D, title XLVII, §4705, by Pub. L. 108-136, div. C, title XXXI, §3141(j)(2)(A)–(C), Nov. 24, 2003, 117 Stat. 1781.)

CODIFICATION

Section was formerly classified to section 7386d of Title 42, The Public Health and Welfare, prior to renumbering by Pub. L. 108-136.

§ 2746. Conceptual and construction design

(a) Conceptual design

(1) Requirement

Subject to paragraph (2) and except as provided in paragraph (3), before submitting to Congress a request for funds for a construction project that is in support of a national security program of the Department of Energy, the Secretary of Energy shall complete a conceptual design for that project.

(2) Requests for conceptual design funds

If the estimated cost of completing a conceptual design for a construction project exceeds \$3,000,000, the Secretary shall submit to Congress a request for funds for the conceptual design before submitting a request for funds for the construction project.

(3) Exceptions

The requirement in paragraph (1) does not apply to a request for funds—

(A) for a construction project the total estimated cost of which is less than the minor construction threshold; or

(B) for emergency planning, design, and construction activities under section 2747 of this title.

(b) Construction design

(1) Authority

Within the amounts authorized by a DOE national security authorization, the Secretary may carry out construction design (including architectural and engineering services) in connection with any proposed construction project if the total estimated cost for such design does not exceed \$600,000.

(2) Limitation on availability of funds for certain projects

If the total estimated cost for construction design in connection with any construction project exceeds \$600,000, funds for that design must be specifically authorized by law.

(Pub. L. 107-314, div. D, title XLVII, §4706, formerly div. C, title XXXVI, §3625, Dec. 2, 2002, 116 Stat. 2759; renumbered div. D, title XLVII, §4706, and amended Pub. L. 108-136, div. C, title XXXI, §3141(j)(2)(A)–(C), (D)(ii), Nov. 24, 2003, 117 Stat. 1781.)

CODIFICATION

Section was formerly classified to section 7386e of Title 42, The Public Health and Welfare, prior to renumbering by Pub. L. 108-136.

AMENDMENTS

2003—Subsec. (a)(3)(B). Pub. L. 108-136, §3141(j)(2)(D)(ii), made technical amendment to reference in original act which appears in text as reference to section 2747 of this title.

§ 2747. Authority for emergency planning, design, and construction activities

(a) Authority

The Secretary of Energy may use any funds available to the Department of Energy pursuant to a DOE national security authorization, including funds authorized to be appropriated for advance planning, engineering, and construction design, and for plant projects, to perform planning, design, and construction activities for any Department of Energy national security program construction project that, as determined by the Secretary, must proceed expeditiously in order to protect public health and safety, to meet the needs of national defense, or to protect property.

(b) Limitation

The Secretary may not exercise the authority under subsection (a) in the case of a construction project until the Secretary has submitted to the congressional defense committees a report on the activities that the Secretary intends to carry out under this section and the circumstances making those activities necessary.

(c) Specific authority

The requirement of section 2746(b)(2) of this title does not apply to emergency planning, design, and construction activities conducted under this section.

(Pub. L. 107-314, div. D, title XLVII, §4707, formerly div. C, title XXXVI, §3626, Dec. 2, 2002, 116 Stat. 2759; renumbered div. D, title XLVII, §4707, and amended Pub. L. 108-136, div. C, title XXXI, §3141(j)(2)(A)–(C), (D)(iii), Nov. 24, 2003, 117 Stat. 1781.)

CODIFICATION

Section was formerly classified to section 7386f of Title 42, The Public Health and Welfare, prior to renumbering by Pub. L. 108-136.

AMENDMENTS

2003—Subsec. (c). Pub. L. 108-136, §3141(j)(2)(D)(iii), made technical amendment to reference in original act which appears in text as reference to section 2746(b)(2) of this title.

§ 2748. Scope of authority to carry out plant projects

In carrying out programs necessary for national security, the authority of the Secretary of Energy to carry out plant projects includes authority for maintenance, restoration, planning, construction, acquisition, modification of facilities, and the continuation of projects authorized in prior years, and land acquisition related thereto.

(Pub. L. 107-314, div. D, title XLVII, §4708, formerly div. C, title XXXVI, §3627, Dec. 2, 2002, 116 Stat. 2760; renumbered div. D, title XLVII, §4708, by Pub. L. 108-136, div. C, title XXXI, §3141(j)(2)(A)–(C), Nov. 24, 2003, 117 Stat. 1781.)

CODIFICATION

Section was formerly classified to section 7386g of Title 42, The Public Health and Welfare, prior to renumbering by Pub. L. 108-136.

§ 2749. Availability of funds

(a) In general

Except as provided in subsection (b), amounts appropriated pursuant to a DOE national security authorization for operation and maintenance or for plant projects may, when so specified in an appropriations Act, remain available until expended.

(b) Exception for program direction funds

Amounts appropriated for program direction pursuant to a DOE national security authorization¹ for a fiscal year shall remain available to be obligated only until the end of that fiscal year.

(Pub. L. 107-314, div. D, title XLVII, §4709, formerly div. C, title XXXVI, §3628, Dec. 2, 2002, 116 Stat. 2760; renumbered div. D, title XLVII, §4709, by Pub. L. 108-136, div. C, title XXXI, §3141(j)(2)(A)–(C), Nov. 24, 2003, 117 Stat. 1781.)

CODIFICATION

Section was formerly classified to section 7386h of Title 42, The Public Health and Welfare, prior to renumbering by Pub. L. 108-136.

§ 2750. Transfer of defense environmental management funds

(a) Transfer authority for defense environmental management funds

The Secretary of Energy shall provide the manager of each field office of the Department

¹ So in original. Probably should be “authorization”.

of Energy with the authority to transfer defense environmental management funds from a program or project under the jurisdiction of that office to another such program or project.

(b) Limitations

(1) Number of transfers

Not more than one transfer may be made to or from any program or project under subsection (a) in a fiscal year.

(2) Amounts transferred

The amount transferred to or from a program or project in any one transfer under subsection (a) may not exceed \$5,000,000.

(3) Determination required

A transfer may not be carried out by a manager of a field office under subsection (a) unless the manager determines that the transfer is necessary—

(A) to address a risk to health, safety, or the environment; or

(B) to assure the most efficient use of defense environmental management funds at the field office.

(4) Impermissible uses

Funds transferred pursuant to subsection (a) may not be used for an item for which Congress has specifically denied funds or for a new program or project that has not been authorized by Congress.

(c) Exemption from reprogramming requirements

The requirements of section 2742 of this title shall not apply to transfers of funds pursuant to subsection (a).

(d) Notification

The Secretary, acting through the Assistant Secretary of Energy for Environmental Management, shall notify Congress of any transfer of funds pursuant to subsection (a) not later than 30 days after such transfer occurs.

(e) Definitions

In this section:

(1) The term “program or project” means, with respect to a field office of the Department of Energy, a program or project that is for environmental restoration or waste management activities necessary for national security programs of the Department, that is being carried out by that office, and for which defense environmental management funds have been authorized and appropriated.

(2) The term “defense environmental management funds” means funds appropriated to the Department of Energy pursuant to an authorization for carrying out environmental restoration and waste management activities necessary for national security programs.

(Pub. L. 107–314, div. D, title XLVII, §4710, formerly div. C, title XXXVI, §3629, Dec. 2, 2002, 116 Stat. 2760; renumbered div. D, title XLVII, §4710, and amended Pub. L. 108–136, div. C, title XXXI, §3141(j)(2)(A)–(C), (D)(iv), Nov. 24, 2003, 117 Stat. 1781.)

CODIFICATION

Section was formerly classified to section 7386i of Title 42, The Public Health and Welfare, prior to renumbering by Pub. L. 108–136.

AMENDMENTS

2003—Subsec. (c). Pub. L. 108–136, §3141(j)(2)(D)(iv), made technical amendment to reference in original act which appears in text as reference to section 2742 of this title.

§ 2751. Transfer of weapons activities funds

(a) Transfer authority for weapons activities funds

The Secretary of Energy shall provide the manager of each field office of the Department of Energy with the authority to transfer weapons activities funds from a program or project under the jurisdiction of that office to another such program or project.

(b) Limitations

(1) Number of transfers

Not more than one transfer may be made to or from any program or project under subsection (a) in a fiscal year.

(2) Amounts transferred

The amount transferred to or from a program or project in any one transfer under subsection (a) may not exceed \$5,000,000.

(3) Determination required

A transfer may not be carried out by a manager of a field office under subsection (a) unless the manager determines that the transfer—

(A) is necessary to address a risk to health, safety, or the environment; or

(B) will result in cost savings and efficiencies.

(4) Limitation

A transfer may not be carried out by a manager of a field office under subsection (a) to cover a cost overrun or scheduling delay for any program or project.

(5) Impermissible uses

Funds transferred pursuant to subsection (a) may not be used for an item for which Congress has specifically denied funds or for a new program or project that has not been authorized by Congress.

(c) Exemption from reprogramming requirements

The requirements of section 2742 of this title shall not apply to transfers of funds pursuant to subsection (a).

(d) Notification

The Secretary, acting through the Administrator for Nuclear Security, shall notify Congress of any transfer of funds pursuant to subsection (a) not later than 30 days after such transfer occurs.

(e) Definitions

In this section:

(1) The term “program or project” means, with respect to a field office of the Department of Energy, a program or project that is for weapons activities necessary for national security programs of the Department, that is being carried out by that office, and for which weapons activities funds have been authorized and appropriated.

(2) The term “weapons activities funds” means funds appropriated to the Department of Energy pursuant to an authorization for carrying out weapons activities necessary for national security programs.

(Pub. L. 107-314, div. D, title XLVII, §4711, formerly div. C, title XXXVI, §3630, Dec. 2, 2002, 116 Stat. 2761; renumbered div. D, title XLVII, §4711, and amended Pub. L. 108-136, div. C, title XXXI, §3141(j)(2)(A)–(C), (D)(v), Nov. 24, 2003, 117 Stat. 1781.)

CODIFICATION

Section was formerly classified to section 7386j of Title 42, The Public Health and Welfare, prior to renumbering by Pub. L. 108-136.

AMENDMENTS

2003—Subsec. (c). Pub. L. 108-136, §3141(j)(2)(D)(v), made technical amendment to reference in original act which appears in text as reference to section 2742 of this title.

§ 2752. Funds available for all national security programs of the Department of Energy

Subject to the provisions of appropriation Acts and section 2742 of this title, amounts appropriated pursuant to a DOE national security authorization for management and support activities and for general plant projects are available for use, when necessary, in connection with all national security programs of the Department of Energy.

(Pub. L. 107-314, div. D, title XLVII, §4712, formerly div. C, title XXXVI, §3631, Dec. 2, 2002, 116 Stat. 2762; renumbered div. D, title XLVII, §4712, and amended Pub. L. 108-136, div. C, title XXXI, §3141(j)(2)(A)–(C), (D)(vi), Nov. 24, 2003, 117 Stat. 1781.)

CODIFICATION

Section was formerly classified to section 7386k of Title 42, The Public Health and Welfare, prior to renumbering by Pub. L. 108-136.

AMENDMENTS

2003—Pub. L. 108-136, §3141(j)(2)(D)(vi), made technical amendment to reference in original act which appears in text as reference to section 2742 of this title.

PART B—PENALTIES

§ 2761. Restriction on use of funds to pay penalties under environmental laws

(a) Restriction

Funds appropriated to the Department of Energy for the Naval Nuclear Propulsion Program or the nuclear weapons programs or other atomic energy defense activities of the Department of Energy may not be used to pay a penalty, fine, or forfeiture in regard to a defense activity or facility of the Department of Energy due to a failure to comply with any environmental requirement.

(b) Exception

Subsection (a) shall not apply with respect to an environmental requirement if—

(1) the President fails to request funds for compliance with the environmental requirement; or

(2) the Congress has appropriated funds for such purpose (and such funds have not been sequestered, deferred, or rescinded) and the Secretary of Energy fails to use the funds for such purpose.

(Pub. L. 107-314, div. D, title XLVII, §4721, formerly Pub. L. 99-661, div. C, title I, §3132, Nov. 14, 1986, 100 Stat. 4063; renumbered Pub. L. 107-314, div. D, title XLVII, §4721, and amended Pub. L. 108-136, div. C, title XXXI, §3141(j)(4), Nov. 24, 2003, 117 Stat. 1781.)

CODIFICATION

Section was formerly classified to section 7273a of Title 42, The Public Health and Welfare, prior to renumbering by Pub. L. 108-136.

AMENDMENTS

2003—Pub. L. 108-136, §3141(j)(4)(D), made technical amendment to section catchline.

§ 2762. Restriction on use of funds to pay penalties under Clean Air Act

None of the funds authorized to be appropriated by the Department of Energy National Security and Military Applications of Nuclear Energy Authorization Act of 1981 (Public Law 96-540) or any other Act may be used to pay any penalty, fine, forfeiture, or settlement resulting from a failure to comply with the Clean Air Act (42 U.S.C. 7401 et seq.) with respect to any defense activity of the Department of Energy if (1) the Secretary finds that compliance is physically impossible within the time prescribed for compliance, or (2) the President has specifically requested appropriations for compliance and the Congress has failed to appropriate funds for such purpose.

(Pub. L. 107-314, div. D, title XLVII, §4722, formerly Pub. L. 96-540, title II, §211, Dec. 17, 1980, 94 Stat. 3203; renumbered Pub. L. 107-314, div. D, title XLVII, §4722, and amended Pub. L. 108-136, div. C, title XXXI, §3141(j)(5), Nov. 24, 2003, 117 Stat. 1781.)

REFERENCES IN TEXT

The Department of Energy National Security and Military Applications of Nuclear Energy Authorization Act of 1981, referred to in text, is Pub. L. 96-540, Dec. 17, 1980, 94 Stat. 3197, which insofar as classified to the Code, enacted this section and section 2513 of this title.

The Clean Air Act, referred to in text, is act July 14, 1955, ch. 360, 69 Stat. 322, as amended, which is classified generally to chapter 85 (§ 7401 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 7401 of Title 42 and Tables.

CODIFICATION

Section was formerly classified to section 7273 of Title 42, The Public Health and Welfare, prior to renumbering by Pub. L. 108-136.

PRIOR PROVISIONS

Provisions similar to those in this section were contained in the following appropriations act:

Pub. L. 96-164, title II, §211, Dec. 29, 1979, 93 Stat. 1264.

AMENDMENTS

2003—Pub. L. 108-136, §3141(j)(5)(C), made technical amendment to section catchline and substituted “the Department of Energy National Security and Military Applications of Nuclear Energy Authorization Act of

1981 (Public Law 96-540) or any other Act” for “this or any other Act” in text.

PART C—OTHER MATTERS

§ 2771. Single request for authorization of appropriations for common defense and security programs

The Secretary shall submit to the Congress for fiscal year 1980, and for each subsequent fiscal year, a single request for authorizations for appropriations for all programs of the Department of Energy involving scientific research and development in support of the armed forces, military applications of nuclear energy, strategic and critical materials necessary for the common defense, and other programs which involve the common defense and security of the United States.

(Pub. L. 107-314, div. D, title XLVII, § 4731, formerly Pub. L. 95-509, title II, § 208, Oct. 24, 1978, 92 Stat. 1779; renumbered Pub. L. 107-314, div. D, title XLVII, § 4731, and amended Pub. L. 108-136, div. C, title XXXI, § 3141(j)(7), Nov. 24, 2003, 117 Stat. 1782.)

CODIFICATION

Section was formerly classified to section 7271 of Title 42, The Public Health and Welfare, prior to renumbering by Pub. L. 108-136.

AMENDMENTS

2003—Pub. L. 108-136, § 3141(j)(7)(C), inserted section catchline and struck out former catchline.

SUBCHAPTER VIII—ADMINISTRATIVE MATTERS

PART A—CONTRACTS

§ 2781. Costs not allowed under covered contracts

(a) In general

The following costs are not allowable under a covered contract:

(1) Costs of entertainment, including amusement, diversion, and social activities and any costs directly associated with such costs (such as tickets to shows or sports events, meals, lodging, rentals, transportation, and gratuities).

(2) Costs incurred to influence (directly or indirectly) legislative action on any matter pending before Congress or a State legislature.

(3) Costs incurred in defense of any civil or criminal fraud proceeding or similar proceeding (including filing of any false certification) brought by the United States where the contractor is found liable or has pleaded nolo contendere to a charge of fraud or similar proceeding (including filing of false certification).

(4) Payments of fines and penalties resulting from violations of, or failure to comply with, Federal, State, local, or foreign laws and regulations, except when incurred as a result of compliance with specific terms and conditions of the contract or specific written instructions from the contracting officer authorizing in advance such payments in accordance with applicable regulations of the Secretary of Energy.

(5) Costs of membership in any social, dining, or country club or organization.

(6) Costs of alcoholic beverages.

(7) Contributions or donations, regardless of the recipient.

(8) Costs of advertising designed to promote the contractor or its products.

(9) Costs of promotional items and memorabilia, including models, gifts, and souvenirs.

(10) Costs for travel by commercial aircraft or by travel by other than common carrier that is not necessary for the performance of the contract and the cost of which exceeds the amount of the standard commercial fare.

(b) Regulations; costs of information provided to Congress or State legislatures and related costs

(1) Not later than 150 days after November 8, 1985, the Secretary of Energy shall prescribe regulations to implement this section. Such regulations may establish appropriate definitions, exclusions, limitations, and qualifications. Such regulations shall be published in accordance with section 418b of title 41.

(2) In any regulations implementing subsection (a)(2), the Secretary may not treat as not allowable (by reason of such subsection) the following costs of a contractor:

(A) Costs of providing to Congress or a State legislature, in response to a request from Congress or a State legislature, information of a factual, technical, or scientific nature, or advice of experts, with respect to topics directly related to the performance of the contract.

(B) Costs for transportation, lodging, or meals incurred for the purpose of providing such information or advice.

(c) “Covered contract” defined

In this section, “covered contract” means a contract for an amount more than \$100,000 entered into by the Secretary of Energy obligating funds appropriated for national security programs of the Department of Energy.

(d) Effective date

Subsection (a) shall apply with respect to costs incurred under a covered contract on or after 30 days after the regulations required by subsection (b) are issued.

(Pub. L. 107-314, div. D, title XLVIII, § 4801, formerly Pub. L. 99-145, title XV, § 1534, Nov. 8, 1985, 99 Stat. 774; Pub. L. 100-180, div. C, title III, § 3131(a), Dec. 4, 1987, 101 Stat. 1238; renumbered Pub. L. 107-314, div. D, title XLVIII, § 4801, and amended Pub. L. 108-136, div. C, title XXXI, § 3141(k)(2), Nov. 24, 2003, 117 Stat. 1783.)

CODIFICATION

Section was formerly classified to section 7256a of Title 42, The Public Health and Welfare, prior to renumbering by Pub. L. 108-136.

AMENDMENTS

2003—Pub. L. 108-136, § 3141(k)(2)(D)(i), made technical amendment to section catchline.

Subsec. (b)(1). Pub. L. 108-136, § 3141(k)(2)(D)(ii), substituted “November 8, 1985,” for “the date of the enactment of this Act,” in the original, which for purposes of codification had been changed to “November 8, 1985,” thus requiring no change in text.

1987—Subsec. (b). Pub. L. 100-180 designated existing provisions as par. (1) and added par. (2).

REGULATIONS

Pub. L. 100-180, div. C, title I, § 3131(b), Dec. 4, 1987, 101 Stat. 1239, provided that: “Regulations to implement paragraph (2) of section 1534(b) of the Department of Energy National Security and Military Applications of Nuclear Energy Authorization Act of 1986 (as added by subsection (a)) [50 U.S.C. 2781(b)(2)] shall be prescribed not later than 90 days after the date of the enactment of this Act [Dec. 4, 1987]. Such regulations shall apply as if included in the original regulations prescribed under such section.”

§ 2782. Prohibition and report on bonuses to contractors operating defense nuclear facilities

(a) Prohibition

The Secretary of Energy may not provide any bonuses, award fees, or other form of performance- or production-based awards to a contractor operating a Department of Energy defense nuclear facility unless, in evaluating the performance or production under the contract, the Secretary considers the contractor's compliance with all applicable environmental, safety, and health statutes, regulations, and practices for determining both the size of, and the contractor's qualification for, such bonus, award fee, or other award. The prohibition in this subsection applies with respect to contracts entered into, or contract options exercised, after November 29, 1989.

(b) Report on Rocky Flats bonuses

The Secretary of Energy shall investigate the payment, from 1981 to 1988, of production bonuses to Rockwell International, the contractor operating the Rocky Flats Plant (Golden, Colorado), for purposes of determining whether the payment of such bonuses was made under fraudulent circumstances. Not later than May 29, 1990, the Secretary shall submit to the Committees on Armed Services of the Senate and House of Representatives a report on the results of that investigation, including the Secretary's conclusions and recommendations.

(c) “Department of Energy defense nuclear facility” defined

In this section, the term “Department of Energy defense nuclear facility” has the meaning given such term by section 2286g of title 42.

(d) Regulations

The Secretary of Energy shall promulgate regulations to implement subsection (a) not later than March 1, 1990.

(Pub. L. 107-314, div. D, title XLVIII, § 4802, formerly Pub. L. 101-189, div. C, title XXXI, § 3151, Nov. 29, 1989, 103 Stat. 1682; renumbered Pub. L. 107-314, div. D, title XLVIII, § 4802, and amended Pub. L. 108-136, div. C, title XXXI, § 3141(k)(3), Nov. 24, 2003, 117 Stat. 1783.)

CODIFICATION

Section was formerly classified to section 7256b of Title 42, The Public Health and Welfare, prior to renumbering by Pub. L. 108-136.

AMENDMENTS

2003—Pub. L. 108-136, § 3141(k)(3)(D)(i), made technical amendment to section catchline.

Subsec. (a). Pub. L. 108-136, § 3141(k)(3)(D)(ii), substituted “November 29, 1989” for “the date of the enact-

ment of this Act” in the original, which for purposes of codification had been changed to “November 29, 1989” thus requiring no change in text.

Subsec. (b). Pub. L. 108-136, § 3141(k)(3)(D)(iii), substituted “May 29, 1990,” for “6 months after November 29, 1989,”.

Subsec. (d). Pub. L. 108-136, § 3141(k)(3)(D)(iv), substituted “March 1, 1990” for “90 days after November 29, 1989”.

§ 2783. Contractor liability for injury or loss of property arising out of atomic weapons testing programs

(a) Short title

This section may be cited as the “Atomic Testing Liability Act”.

(b) Federal remedies applicable; exclusiveness of remedies

(1) Remedy

The remedy against the United States provided by sections 1346(b) and 2672 of title 28, by the Act of March 9, 1920 (46 U.S.C. App. 741-752), or by the Act of March 3, 1925 (46 U.S.C. App. 781-790), as appropriate, for injury, loss of property, personal injury, or death shall apply to any civil action for injury, loss of property, personal injury, or death due to exposure to radiation based on acts or omissions by a contractor in carrying out an atomic weapons testing program under a contract with the United States.

(2) Exclusivity

The remedies referred to in paragraph (1) shall be exclusive of any other civil action or proceeding for the purpose of determining civil liability arising from any act or omission of the contractor without regard to when the act or omission occurred. The employees of a contractor referred to in paragraph (1) shall be considered to be employees of the Federal Government, as provided in section 2671 of title 28, for the purposes of any such civil action or proceeding; and the civil action or proceeding shall proceed in the same manner as any action against the United States filed pursuant to section 1346(b) of such title and shall be subject to the limitations and exceptions applicable to those actions.

(c) Procedure

A contractor against whom a civil action or proceeding described in subsection (b) is brought shall promptly deliver all processes served upon that contractor to the Attorney General of the United States. Upon certification by the Attorney General that the suit against the contractor is within the provisions of subsection (b), a civil action or proceeding commenced in a State court shall be removed without bond at any time before trial by the Attorney General to the district court of the United States for the district and division embracing the place wherein it is pending and the proceedings shall be deemed a tort action brought against the United States under the provisions of section 1346(b), 2401(b), or 2402, or sections 2671 through 2680 of title 28. For purposes of removal, the certification by the Attorney General under this subsection establishes contractor status conclusively.

(d) Actions covered

The provisions of this section shall apply to any action, within the provisions of subsection (b), which is pending on November 5, 1990, or commenced on or after such date. Notwithstanding section 2401(b) of title 28, if a civil action or proceeding to which this section applies is pending on November 5, 1990, and is dismissed because the plaintiff in such action or proceeding did not file an administrative claim as required by section 2672 of that title, the plaintiff in that action or proceeding shall have 30 days from the date of the dismissal or two years from the date upon which the claim accrued, whichever is later, to file an administrative claim, and any claim or subsequent civil action or proceeding shall thereafter be subject to the provisions of section 2401(b) of title 28.

(e) “Contractor” defined

For purposes of this section, the term “contractor” includes a contractor or cost reimbursement subcontractor of any tier participating in the conduct of the United States atomic weapons testing program for the Department of Energy (or its predecessor agencies, including the Manhattan Engineer District, the Atomic Energy Commission, and the Energy Research and Development Administration). Such term also includes facilities which conduct or have conducted research concerning health effects of ionizing radiation in connection with the testing under contract with the Department of Energy (or any of its predecessor agencies).

(Pub. L. 107-314, div. D, title XLVIII, § 4803, formerly Pub. L. 101-510, div. C, title XXXI, § 3141, Nov. 5, 1990, 104 Stat. 1837; renumbered Pub. L. 107-314, div. D, title XLVIII, § 4803, and amended Pub. L. 108-136, div. C, title XXXI, § 3141(k)(4), Nov. 24, 2003, 117 Stat. 1783.)

REFERENCES IN TEXT

Act of March 9, 1920, referred to in subsec. (b)(1), is act Mar. 9, 1920, ch. 95, 41 Stat. 525, as amended, popularly known as the Suits in Admiralty Act, which is classified generally to chapter 20 (§ 741 et seq.) of Title 46, Appendix, Shipping. For complete classification of this Act to the Code, see Short Title note set out under section 741 of Title 46, Appendix, and Tables.

Act of March 3, 1925, referred to in subsec. (b)(1), is act Mar. 3, 1925, ch. 428, 43 Stat. 1112, as amended, popularly known as the Public Vessels Act, which is classified generally to chapter 22 (§ 781 et seq.) of Title 46, Appendix. For complete classification of this Act to the Code, see Short Title note set out under section 781 of Title 46, Appendix, and Tables.

CODIFICATION

Section was formerly classified to section 2212 of Title 42, The Public Health and Welfare, prior to renumbering by Pub. L. 108-136.

AMENDMENTS

2003—Pub. L. 108-136, § 3141(k)(4)(D)(i), made technical amendment to section catchline.

Subsec. (d). Pub. L. 108-136, § 3141(k)(4)(D)(ii), substituted “November 5, 1990,” for “the date of the enactment of this Act” in two places in the original, which for purposes of codification had been changed to “November 5, 1990,” thus requiring no change in text.

PART B—RESEARCH AND DEVELOPMENT

§ 2791. Laboratory-directed research and development programs**(a) Authority**

Government-owned, contractor-operated laboratories that are funded out of funds available to the Department of Energy for national security programs are authorized to carry out laboratory-directed research and development.

(b) Regulations

The Secretary of Energy shall prescribe regulations for the conduct of laboratory-directed research and development at such laboratories.

(c) Funding

Of the funds provided by the Department of Energy to such laboratories for national security activities, the Secretary shall provide a specific amount, not to exceed 6 percent of such funds, to be used by such laboratories for laboratory-directed research and development.

(d) “Laboratory-directed research and development” defined

For purposes of this section, the term “laboratory-directed research and development” means research and development work of a creative and innovative nature which, under the regulations prescribed pursuant to subsection (b), is selected by the director of a laboratory for the purpose of maintaining the vitality of the laboratory in defense-related scientific disciplines.

(Pub. L. 107-314, div. D, title XLVIII, § 4811, formerly Pub. L. 101-510, div. C, title XXXI, § 3132, Nov. 5, 1990, 104 Stat. 1832; renumbered Pub. L. 107-314, div. D, title XLVIII, § 4811, and amended Pub. L. 108-136, div. C, title XXXI, § 3141(k)(6), Nov. 24, 2003, 117 Stat. 1784.)

CODIFICATION

Section was formerly classified to section 7257a of Title 42, The Public Health and Welfare, prior to renumbering by Pub. L. 108-136.

AMENDMENTS

2003—Pub. L. 108-136, § 3141(k)(6)(D), made technical amendment to section catchline.

§ 2792. Limitations on use of funds for laboratory directed research and development purposes**(a) General limitations**

(1) No funds authorized to be appropriated or otherwise made available to the Department of Energy in any fiscal year after fiscal year 1997 for weapons activities may be obligated or expended for activities under the Department of Energy Laboratory Directed Research and Development Program, or under any Department of Energy technology transfer program or cooperative research and development agreement, unless such activities support the national security mission of the Department of Energy.

(2) No funds authorized to be appropriated or otherwise made available to the Department of Energy in any fiscal year after fiscal year 1997 for environmental restoration, waste management, or nuclear materials and facilities stabilization may be obligated or expended for activities under the Department of Energy Lab-

oratory Directed Research and Development Program, or under any Department of Energy technology transfer program or cooperative research and development agreement, unless such activities support the environmental restoration mission, waste management mission, or materials stabilization mission, as the case may be, of the Department of Energy.

(b) Limitation in fiscal year 1998 pending submittal of annual report

Not more than 30 percent of the funds authorized to be appropriated or otherwise made available to the Department of Energy in fiscal year 1998 for laboratory directed research and development may be obligated or expended for such research and development until the Secretary of Energy submits to the congressional defense committees the report required by section 2793(b) of this title in 1998.

(c) Omitted

(d) Assessment of funding level for laboratory directed research and development

The Secretary shall include in the report submitted under such section 2793(b)(1) of this title in 1998 an assessment of the funding required to carry out laboratory directed research and development, including a recommendation for the percentage of the funds provided to Government-owned, contractor-operated laboratories for national security activities that should be made available for such research and development under section 2791(c) of this title.

(e) “Laboratory directed research and development” defined

In this section, the term “laboratory directed research and development” has the meaning given that term in section 2791(d) of this title.

(Pub. L. 107-314, div. D, title XLVIII, § 4812, formerly Pub. L. 105-85, div. C, title XXXI, § 3137, Nov. 18, 1997, 111 Stat. 2038; renumbered Pub. L. 107-314, div. D, title XLVIII, § 4812, and amended Pub. L. 108-136, div. C, title XXXI, § 3141(k)(7)(A), Nov. 24, 2003, 117 Stat. 1784.)

CODIFICATION

Section is comprised of section 4812 of Pub. L. 107-314. Subsec. (c) of section 4812 of Pub. L. 107-314 amended section 2793 of this title.

Section was formerly classified to section 7257c of Title 42, The Public Health and Welfare, prior to renumbering by Pub. L. 108-136.

AMENDMENTS

2003—Subsec. (b). Pub. L. 108-136, § 3141(k)(7)(A)(iv), made technical amendment to reference in original act which appears in text as reference to section 2793(b) of this title.

Subsec. (d). Pub. L. 108-136, § 3141(k)(7)(A)(v)(II), made technical amendment to reference in original act which appears in text as reference to section 2791(c) of this title.

Pub. L. 108-136, § 3141(k)(7)(A)(v)(I), made technical amendment to reference in original act which appears in text as reference to section 2793(b)(1) of this title.

Subsec. (e). Pub. L. 108-136, § 3141(k)(7)(A)(vi), made technical amendment to reference in original act which appears in text as reference to section 2791(d) of this title.

§ 2793. Limitation on use of funds for certain research and development purposes

(a) Limitation

No funds authorized to be appropriated or otherwise made available to the Department of Energy for fiscal year 1997 under section 3101 of the National Defense Authorization Act for Fiscal Year 1997 (Public Law 104-201) may be obligated or expended for activities under the Department of Energy Laboratory Directed Research and Development Program, or under any Department of Energy technology transfer program or cooperative research and development agreement, unless such activities support the national security mission of the Department of Energy.

(b) Annual report

(1) Not later than February 1 each year, the Secretary of Energy shall submit to the congressional defense committees a report on the funds expended during the preceding fiscal year on activities under the Department of Energy Laboratory Directed Research and Development Program. The purpose of the report is to permit an assessment of the extent to which such activities support the national security mission of the Department of Energy.

(2) Each report shall be prepared by the officials responsible for Federal oversight of the funds expended on activities under the program.

(3) Each report shall set forth the criteria utilized by the officials preparing the report in determining whether or not the activities reviewed by such officials support the national security mission of the Department.

(Pub. L. 107-314, div. D, title XLVIII, § 4812A, formerly Pub. L. 104-201, div. C, title XXXI, § 3136, Sept. 23, 1996, 110 Stat. 2830; Pub. L. 107-314, div. D, title XLVIII, § 4812(c), formerly Pub. L. 105-85, div. C, title XXXI, § 3137(c), Nov. 18, 1997, 111 Stat. 2039, renumbered Pub. L. 107-314, div. D, title XLVIII, § 4812(c), by Pub. L. 108-136, div. C, title XXXI, § 3141(k)(7)(A)(i)-(iii), Nov. 24, 2003, 117 Stat. 1784; renumbered Pub. L. 107-314, div. D, title XLVIII, § 4812A, and amended Pub. L. 108-136, div. C, title XXXI, § 3141(k)(7)(B), Nov. 24, 2003, 117 Stat. 1784.)

REFERENCES IN TEXT

Section 3101 of the National Defense Authorization Act for Fiscal Year 1997, referred to in subsec. (a), is section 3101 of Pub. L. 104-201, div. C, title XXXI, Sept. 23, 1996, 110 Stat. 2820, which is not classified to the Code.

CODIFICATION

Subsec. (b) of this section was formerly classified to section 7257b of Title 42, The Public Health and Welfare, prior to renumbering by Pub. L. 108-136.

AMENDMENTS

2003—Subsec. (a). Pub. L. 108-136, § 3141(k)(7)(B)(iv), inserted “of the National Defense Authorization Act for Fiscal Year 1997 (Public Law 104-201)” after “section 3101”.

1997—Subsec. (b)(1). Pub. L. 107-314, § 4812(c), formerly Pub. L. 105-85, § 3137(c), substituted “Not later than February 1 each year, the Secretary of Energy shall submit” for “The Secretary of Energy shall annually submit”.

§ 2794. Critical technology partnerships**(a) Partnerships**

For the purpose of facilitating the transfer of technology, the Secretary of Energy shall ensure, to the maximum extent practicable, that atomic energy defense activities research on, and development of, any dual-use critical technology is conducted through cooperative research and development agreements, or other arrangements, that involve laboratories of the Department of Energy and other entities.

(b) Definitions

In this section:

(1) The term “dual-use critical technology” means a technology—

(A) that is critical to atomic energy defense activities, as determined by the Secretary of Energy;

(B) that has military applications and non-military applications; and

(C) that either—

(i)(I) appears on the list of national critical technologies contained in a biennial report on national critical technologies submitted to Congress by the President pursuant to section 6683(d)¹ of title 42; and

(II) has not been expressly deleted from such list by such a report subsequently submitted to Congress by the President; or

(ii)(I) appears on the list of critical technologies contained in an annual defense critical technologies plan submitted to Congress by the Secretary of Defense pursuant to section 2506¹ of title 10; and

(II) has not been expressly deleted from such list by such a plan subsequently submitted to Congress by the Secretary.

(2) The term “cooperative research and development agreement” has the meaning given that term by section 3710a(d) of title 15.

(3) The term “other entities” means—

(A) firms, or a consortium of firms, that are eligible to participate in a partnership or other arrangement with a laboratory of the Department of Energy, as determined in accordance with applicable law and regulations; or

(B) firms, or a consortium of firms, described in subparagraph (A) in combination with one or more of the following:

(i) Institutions of higher education in the United States.

(ii) Departments and agencies of the Federal Government other than the Department of Energy.

(iii) Agencies of State Governments.

(iv) Any other persons or entities that may be eligible and appropriate, as determined in accordance with applicable laws and regulations.

(4) The term “atomic energy defense activities” does not include activities covered by Executive Order No. 12344, dated February 1, 1982, pertaining to the Naval nuclear propulsion program.

(Pub. L. 107-314, div. D, title XLVIII, §4813, formerly Pub. L. 102-190, div. C, title XXXI, §3136,

Dec. 5, 1991, 105 Stat. 1577; Pub. L. 103-35, title II, §203(b)(3), May 31, 1993, 107 Stat. 102; renumbered Pub. L. 107-314, div. D, title XLVIII, §4813, by Pub. L. 108-136, div. C, title XXXI, §3141(k)(8), Nov. 24, 2003, 117 Stat. 1785.)

REFERENCES IN TEXT

Section 6683 of title 42, referred to in subsec. (b)(1)(C)(i)(I), was omitted from the Code.

Section 2506 of title 10, referred to in subsec. (b)(1)(C)(ii)(I), was amended generally by Pub. L. 104-201, div. A, title VIII, §829(d), Sept. 23, 1996, 110 Stat. 2613, and, as so amended, no longer relates to submission of a plan to Congress.

Executive Order No. 12344, dated February 1, 1982, referred to in subsec. (b)(4), is set out as a note under section 2511 of this title.

CODIFICATION

Section was formerly classified to section 2123 of Title 42, The Public Health and Welfare, prior to renumbering by Pub. L. 108-136.

AMENDMENTS

1993—Subsec. (b)(1)(C)(ii)(I), Pub. L. 103-35 substituted “section 2506 of title 10” for “section 2522 of title 10”.

§ 2795. University-based research collaboration program**(a) Findings**

Congress makes the following findings:

(1) The maintenance of scientific and engineering competence in the United States is vital to long-term national security and the defense and national security missions of the Department of Energy.

(2) Engaging the universities and colleges of the Nation in research on long-range problems of vital national security interest will be critical to solving the technology challenges faced within the defense and national security programs of the Department of Energy in the next century.

(3) Enhancing collaboration among the national laboratories, universities and colleges, and industry will contribute significantly to the performance of these Department of Energy missions.

(b) Program

The Secretary of Energy shall establish a university program at a location that can develop the most effective collaboration among national laboratories, universities and colleges, and industry in support of scientific and engineering advancement in key Department of Energy defense and national security program areas.

(c) Funding

Of the funds authorized to be appropriated in title XXXI of the National Defense Authorization Act for Fiscal Year 1998 (Public Law 105-85) to the Department of Energy for fiscal year 1998, the Secretary shall make \$5,000,000 available for the establishment and operation of the program under subsection (b).

(Pub. L. 107-314, div. D, title XLVIII, §4814, formerly Pub. L. 105-85, div. C, title XXXI, §3155, Nov. 18, 1997, 111 Stat. 2044; renumbered Pub. L. 107-314, div. D, title XLVIII, §4814, and amended Pub. L. 108-136, div. C, title XXXI, §3141(k)(9), Nov. 24, 2003, 117 Stat. 1785.)

¹ See References in Text note below.

REFERENCES IN TEXT

Title XXXI of the National Defense Authorization Act for Fiscal Year 1998, referred to in subsec. (c), is title XXXI of div. C of Pub. L. 105-85, Nov. 18, 1997, 111 Stat. 2023, as amended. For complete classification of title XXXI to the Code, see Tables.

CODIFICATION

Section was formerly set out as a note under section 7381 of Title 42, The Public Health and Welfare, prior to renumbering by Pub. L. 108-136.

AMENDMENTS

2003—Subsec. (c). Pub. L. 108-136, §3141(k)(9)(D), substituted “title XXXI of the National Defense Authorization Act for Fiscal Year 1998 (Public Law 105-85)” for “this title”.

PART C—FACILITIES MANAGEMENT

§ 2811. Transfers of real property at certain Department of Energy facilities

(a) Transfer regulations

(1) The Secretary of Energy shall prescribe regulations for the transfer by sale or lease of real property at Department of Energy defense nuclear facilities for the purpose of permitting the economic development of the property.

(2) The Secretary of Energy may not transfer real property under the regulations prescribed under paragraph (1) until—

(A) the Secretary submits a notification of the proposed transfer to the congressional defense committees; and

(B) a period of 30 days has elapsed following the date on which the notification is submitted.

(b) Indemnification

(1) Except as provided in paragraph (3) and subject to subsection (c), in the sale or lease of real property pursuant to the regulations prescribed under subsection (a), the Secretary of Energy may hold harmless and indemnify a person or entity described in paragraph (2) against any claim for injury to person or property that results from the release or threatened release of a hazardous substance or pollutant or contaminant as a result of Department of Energy activities at the defense nuclear facility on which the real property is located. Before entering into any agreement for such a sale or lease, the Secretary shall notify the person or entity that the Secretary has authority to provide indemnification to the person or entity under this subsection. The Secretary shall include in any agreement for such a sale or lease a provision stating whether indemnification is or is not provided.

(2) Paragraph (1) applies to the following persons and entities:

(A) Any State that acquires ownership or control of real property of a defense nuclear facility.

(B) Any political subdivision of a State that acquires such ownership or control.

(C) Any other person or entity that acquires such ownership or control.

(D) Any successor, assignee, transferee, lender, or lessee of a person or entity described in subparagraphs (A) through (C).

(3) To the extent the persons and entities described in paragraph (2) contributed to any such

release or threatened release, paragraph (1) shall not apply.

(c) Conditions

(1) No indemnification on a claim for injury may be provided under this section unless the person or entity making a request for the indemnification—

(A) notifies the Secretary of Energy in writing within two years after such claim accrues;

(B) furnishes to the Secretary copies of pertinent papers received by the person or entity;

(C) furnishes evidence or proof of the claim;

(D) provides, upon request by the Secretary, access to the records and personnel of the person or entity for purposes of defending or settling the claim; and

(E) begins action within six months after the date of mailing, by certified or registered mail, of notice of final denial of the claim by the Secretary.

(2) For purposes of paragraph (1)(A), the date on which a claim accrues is the date on which the person asserting the claim knew (or reasonably should have known) that the injury to person or property referred to in subsection (b)(1) was caused or contributed to by the release or threatened release of a hazardous substance, pollutant, or contaminant as a result of Department of Energy activities at the defense nuclear facility on which the real property is located.

(d) Authority of Secretary of Energy

(1) In any case in which the Secretary of Energy determines that the Secretary may be required to indemnify a person or entity under this section for any claim for injury to person or property referred to in subsection (b)(1), the Secretary may settle or defend the claim on behalf of that person or entity.

(2) In any case described in paragraph (1), if the person or entity that the Secretary may be required to indemnify does not allow the Secretary to settle or defend the claim, the person or entity may not be indemnified with respect to that claim under this section.

(e) Relationship to other law

Nothing in this section shall be construed as affecting or modifying in any way section 9620(h) of title 42.

(f) Definitions

In this section:

(1) The term “defense nuclear facility” has the meaning provided by the term “Department of Energy defense nuclear facility” in section 2286g of title 42.

(2) The terms “hazardous substance”, “release”, and “pollutant or contaminant” have the meanings provided by section 9601 of title 42.

(Pub. L. 107-314, div. D, title XLVIII, §4831, formerly Pub. L. 105-85, div. C, title XXXI, §3158, Nov. 18, 1997, 111 Stat. 2046; Pub. L. 108-7, div. D, title V, §506, Feb. 20, 2003, 117 Stat. 158; renumbered Pub. L. 107-314, div. D, title XLVIII, §4831, by Pub. L. 108-136, div. C, title XXXI, §3141(k)(11), Nov. 24, 2003, 117 Stat. 1785; Pub. L. 108-137, title V, §504(a), Dec. 1, 2003, 117 Stat. 1868.)

CODIFICATION

Section was formerly classified to section 7274q of Title 42, The Public Health and Welfare, prior to renumbering by Pub. L. 108-136.

AMENDMENTS

2003—Subsec. (b)(2)(D). Pub. L. 108-137, §504(a), which directed that subsec. (b)(2) of section 3158 of the National Defense Authorization Act for Fiscal Year 1998 (42 U.S.C. 7274q(b)(2)) be amended by adding a subpar. (D), was executed to that section as renumbered by Pub. L. 108-136 to reflect the probable intent of Congress. See Amendment note below and Effective Date of 2003 Amendment note below.

Pub. L. 108-7, which directed the amendment of “Title 42 U.S.C. 7274g” by adding subpar. (D) to subsec. (b)(2), was probably intended to amend section 3158 of Pub. L. 105-85, which was formerly classified to section 7274q of title 42 prior to renumbering and transfer to this section by Pub. L. 108-136. However, the amendment was not executed in view of the enactment of section 504 of Pub. L. 108-137 which added a substantially identical subpar. (D). See Amendment note above and Effective Date of 2003 Amendment note below.

EFFECTIVE DATE OF 2003 AMENDMENT

Pub. L. 108-137, title V, §504(b), Dec. 1, 2003, 117 Stat. 1868, provided that: “The amendment made by section 506 [probably means section 506 of Pub. L. 108-7, see 2003 Amendment note above], as amended by this section [section 504 of Pub. L. 108-137 did not amend section 506 of Pub. L. 108-7, see 2003 Amendment note above], is effective as of the date of enactment of the National Defense Authorization Act for Fiscal Year 1998 [Nov. 18, 1997].”

§ 2812. Engineering and manufacturing research, development, and demonstration by plant managers of certain nuclear weapons production plants

(a) Authority for programs at nuclear weapons productions facilities

The Administrator for Nuclear Security shall authorize the head of each nuclear weapons production facility to establish an Engineering and Manufacturing Research, Development, and Demonstration Program under this section.

(b) Projects and activities

The projects and activities carried out through the program at a nuclear weapons production facility under this section shall support innovative or high-risk design and manufacturing concepts and technologies with potentially high payoff for the nuclear weapons complex. Those projects and activities may include—

- (1) replacement of obsolete or aging design and manufacturing technologies;
- (2) development of innovative agile manufacturing techniques and processes; and
- (3) training, recruitment, or retention of essential personnel in critical engineering and manufacturing disciplines.

(c) Funding

The Administrator may authorize the head of each nuclear weapons production facility to obligate up to \$3,000,000 of funds within the Advanced Design and Production Technologies Campaign available for such facility during fiscal year 2001 to carry out projects and activities of the program under this section at that facility.

(d) Report

The Administrator for Nuclear Security shall submit to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives, not later than September 15, 2001, a report describing, for each nuclear weapons production facility, each project or activity for which funds were obligated under the program, the criteria used in the selection of each such project or activity, the potential benefits of each such project or activity, and the Administrator’s recommendation concerning whether the program should be continued.

(e) Definition

For purposes of this section, the term “nuclear weapons production facility” has the meaning given that term in section 2471(2) of this title.

(Pub. L. 107-314, div. D, title XLVIII, §4832, formerly Pub. L. 106-398, §1 [div. C, title XXXI, §3156], Oct. 30, 2000, 114 Stat. 1654, 1654A-467; renumbered Pub. L. 107-314, div. D, title XLVIII, §4832, by Pub. L. 108-136, div. C, title XXXI, §3141(k)(12), Nov. 24, 2003, 117 Stat. 1785.)

CODIFICATION

Section was formerly set out as a note under section 7274r of Title 42, The Public Health and Welfare, prior to renumbering by Pub. L. 108-136.

ACTIVITIES AT COVERED NUCLEAR WEAPONS FACILITIES

Pub. L. 108-447, div. C, title III, §308, Dec. 8, 2004, 118 Stat. 2959, provided that: “The Administrator of the National Nuclear Security Administration may authorize the manager of a covered nuclear weapons research, development, testing or production facility to engage in research, development, and demonstration activities with respect to the engineering and manufacturing capabilities at such facility in order to maintain and enhance such capabilities at such facility: *Provided*, That of the amount allocated to a covered nuclear weapons facility each fiscal year from amounts available to the Department of Energy for such fiscal year for national security programs, not more than an amount equal to 2 percent of such amount may be used for these activities: *Provided further*, That for purposes of this section, the term ‘covered nuclear weapons facility’ means the following:

- “(1) The Kansas City Plant, Kansas City, Missouri.
- “(2) The Y-12 Plant, Oak Ridge, Tennessee.
- “(3) The Pantex Plant, Amarillo, Texas.
- “(4) The Savannah River Plant, South Carolina.
- “(5) The Nevada Test Site.”

Similar provisions were contained in the following prior appropriation acts:

Pub. L. 108-137, title III, §308, Dec. 1, 2003, 117 Stat. 1861.

Pub. L. 108-7, div. D, title III, §308, Feb. 20, 2003, 117 Stat. 154.

Pub. L. 107-66, title III, §309, Nov. 12, 2001, 115 Stat. 509.

Pub. L. 106-377, §1(a)(2) [title III, §310], Oct. 27, 2000, 114 Stat. 1441, 1441A-80.

§ 2813. Pilot program relating to use of proceeds of disposal or utilization of certain Department of Energy assets

(a) Purpose

The purpose of this section is to encourage the Secretary of Energy to dispose of or otherwise utilize certain assets of the Department of Energy by making available to the Secretary the

proceeds of such disposal or utilization for purposes of defraying the costs of such disposal or utilization.

(b) Use of proceeds to defray costs

(1) Notwithstanding section 3302 of title 31, the Secretary may retain from the proceeds of the sale, lease, or disposal of an asset under subsection (c) an amount equal to the cost of the sale, lease, or disposal of the asset. The Secretary shall utilize amounts retained under this paragraph to defray the cost of the sale, lease, or disposal.

(2) For purposes of paragraph (1), the cost of a sale, lease, or disposal shall include—

(A) the cost of administering the sale, lease, or disposal;

(B) the cost of recovering or preparing the asset concerned for the sale, lease, or disposal; and

(C) any other cost associated with the sale, lease, or disposal.

(c) Covered transactions

Subsection (b) applies to the following transactions:

(1) The sale of heavy water at the Savannah River Site, South Carolina, that is under the jurisdiction of the Defense Environmental Management Program.

(2) The sale of precious metals that are under the jurisdiction of the Defense Environmental Management Program.

(3) The lease of buildings and other facilities located at the Hanford Reservation, Washington, that are under the jurisdiction of the Defense Environmental Management Program.

(4) The lease of buildings and other facilities located at the Savannah River Site that are under the jurisdiction of the Defense Environmental Management Program.

(5) The disposal of equipment and other personal property located at the Rocky Flats Defense Environmental Technology Site, Colorado, that is under the jurisdiction of the Defense Environmental Management Program.

(6) The disposal of materials at the National Electronics Recycling Center, Oak Ridge, Tennessee that are under the jurisdiction of the Defense Environmental Management Program.

(d) Applicability of disposal authority

Nothing in this section shall be construed to limit the application of subchapter II of chapter 5 and section 549 of title 40 to the disposal of equipment and other personal property covered by this section.

(e) Report

Not later than January 31, 1999, the Secretary shall submit to the congressional defense committees a report on amounts retained by the Secretary under subsection (b) during fiscal year 1998.

(Pub. L. 107-314, div. D, title XLVIII, §4833, formerly Pub. L. 105-85, div. C, title XXXI, §3138, Nov. 18, 1997, 111 Stat. 2039; renumbered Pub. L. 107-314, div. D, title XLVIII, §4833, and amended

Pub. L. 108-136, div. C, title XXXI, §3141(k)(13), Nov. 24, 2003, 117 Stat. 1786.)

CODIFICATION

Section was formerly set out as a note under section 7256 of Title 42, The Public Health and Welfare, prior to renumbering by Pub. L. 108-136.

AMENDMENTS

2003—Subsec. (d). Pub. L. 108-136, §3141(k)(13)(D), substituted “subchapter II of chapter 5 and section 549 of title 40” for “sections 202 and 203(j) of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 483 and 484(j))”.

PART D—OTHER MATTERS

§ 2821. Semiannual reports on local impact assistance

The Secretary of Energy shall submit to Congress every six months a report setting forth a description of, and the amount or value of, all local impact assistance provided during the preceding six months under section 2704(c)(6) of this title.

(Pub. L. 107-314, div. D, title XLVIII, §4851, formerly Pub. L. 105-85, div. C, title XXXI, §3153(f), Nov. 18, 1997, 111 Stat. 2044; renumbered Pub. L. 107-314, div. D, title XLVIII, §4851, and amended Pub. L. 108-136, div. C, title XXXI, §3141(k)(15), Nov. 24, 2003, 117 Stat. 1786.)

CODIFICATION

Section was formerly set out as a note under section 7274h of Title 42, The Public Health and Welfare, prior to renumbering by Pub. L. 108-136.

AMENDMENTS

2003—Pub. L. 108-136, §3141(k)(15)(C)(iii), substituted “section 2704(c)(6) of this title” for “section 3161(c)(6) of the National Defense Authorization Act of 1993 (42 U.S.C. 7274h(c)(6))”.

Pub. L. 108-136, §3141(k)(15)(C)(i), (ii), inserted section catchline and directed striking subsec. heading “Semiannual reports to Congress of local impact assistance” which was executed by striking “Semiannual report to Congress of local impact assistance”, to reflect the probable intent of Congress.

§ 2822. Payment of costs of operation and maintenance of infrastructure at Nevada Test Site

Notwithstanding any other provision of law and effective as of September 30, 1996, the costs associated with operating and maintaining the infrastructure at the Nevada Test Site, Nevada, with respect to any activities initiated at the site after that date by the Department of Defense pursuant to a work-for-others agreement may be paid for from funds authorized to be appropriated to the Department of Energy for activities at the Nevada Test Site.

(Pub. L. 107-314, div. D, title XLVIII, §4852, formerly Pub. L. 104-201, div. C, title XXXI, §3144, Sept. 23, 1996, 110 Stat. 2838; renumbered Pub. L. 107-314, div. D, title XLVIII, §4852, by Pub. L. 108-136, div. C, title XXXI, §3141(k)(16), Nov. 24, 2003, 117 Stat. 1786.)